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             UNITED STATES DISTRICT COURT
           FOR THE NORTHERN DISTRICT OF OHIO
2
                  EASTERN DIVISION
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                             MDL No. 2804
    IN RE: NATIONAL
5
    PRESCRIPTION OPIATE
                              Case No.
    LITIGATION
6
                              1:17-MD-2804
    *******
7
    THIS DOCUMENT RELATES TO Hon. Dan A. Polster
8
    ALL CASES
    ********
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11
        HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
12
                 CONFIDENTIALITY REVIEW
13
        VIDEOTAPED DEPOSITION OF THOMAS S. MOFFATT
14
15
             Tuesday, January 15th, 2019
16
                  8:04 a.m.
17
18
       Held At:
19
             Omni Hotel
20
             One West Exchange Street
21
             Providence, Rhode Island
22
23
    REPORTED BY:
    Maureen O'Connor Pollard, RMR, CLR, CSR
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              PROCEEDINGS
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              THE VIDEOGRAPHER: We are now on the
 4
    record. My name is Robert Sweig, and I'm a
 5
    videographer for Golkow Litigation Services.
 6
              Today's date is January 15, 2019, and
 7
    the time is 8:04 a.m.
 8
              This video deposition is being held in
 9
    Providence, Rhode Island in the matter of In Re:
10
    National Prescription Opiate Litigation pending
11
    before the United States District Court for the
12
    Northern District of Ohio, Eastern Division.
13
              The deponent is Thomas Moffatt.
14
               Counsel appearances will be as noted
15
    on the stenographic record.
16
              Our court reporter is Maureen Pollard,
17
    who will now swear in our witness.
18
19
                    THOMAS S. MOFFATT,
20
    having been duly sworn, was examined and
21
    testified as follows:
22
                    EXAMINATION
23
    BY MR. ELSNER:
24
              Good morning.
         O.
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- 1 A. Good morning.
- Q. My name is Michael Elsner, I'm from
- 3 the law firm of Motley Rice, and I represent the
- 4 plaintiffs in these actions.
- 5 Can you please state your name?
- A. Thomas S. Moffatt, M-O-F-F-A-T-T.
- 7 Q. And what is your date of birth?
- 9 Q. And where do you live, sir?
- 10 A. Kingston, Rhode Island.
- 11 O. And you graduated from college with a
- degree in history, is that right?
- 13 A. Yes.
- Q. Did you take any pharmaceutical
- 15 courses in college?
- 16 A. No.
- Q. Did you take any courses that related
- to pharmacy distribution or regulations of
- 19 pharmacies?
- 20 A. No.
- O. What about courses in controlled
- 22 substances or other narcotics?
- 23 A. No.
- Q. You then took a few years off and you

- went to law school, is that right?
- 2 A. I took a few years off, then I went to
- 3 law school.
- Q. What did you do in that intervening
- 5 period?
- 6 A. I worked, principally I worked at
- 7 Brother Industries in Nagoya, Japan as an
- 8 English consultant, and then I came back and
- 9 worked as a paralegal for a year in a personal
- 10 injury firm.
- 0. What was the name of the firm?
- 12 A. Law offices of S. George Bromberg.
- 0. And where was that?
- 14 A. Cambridge, Massachusetts.
- Q. And then you attended Northeastern
- 16 University School of Law, is that right?
- 17 A. Correct.
- Q. Did you graduate from law school?
- 19 A. Yes.
- Q. And did you take the Bar exam when you
- 21 graduated?
- 22 A. Yes.
- Q. Are you a licensed attorney today?
- 24 A. Yes.

- 1 Q. What states are you licensed to
- practice?
- A. I'm licensed in Massachusetts, and
- 4 then I'm registered as an out-of-state in-house
- 5 counsel in Rhode Island.
- 6 Q. In law school did you take any courses
- 7 in pharmaceutical law or regulations of
- 8 pharmacies?
- 9 A. No.
- 10 Q. After law school you went to work for
- 11 Mintz Levin, is that right?
- 12 A. Correct.
- Q. And what was your area of practice
- when you worked there?
- 15 A. I was a corporate attorney.
- Q. Okay. What years were you there?
- 17 A. I was there from 1993, the fall of '93
- 18 through August -- or July of '97.
- 19 Q. What type of work did you do as a
- 20 corporate attorney for Mintz Levin?
- 21 A. A wide variety of corporate matters,
- transactions, securities, general corporate law.
- Q. Did you deal with any DEA regulations
- while working at Mintz Levin?

- 1 A. No.
- Q. Was CVS a client of Mintz Levin while
- you were there?
- 4 A. Yes.
- 5 Q. Did you work on that -- for CVS while
- 6 at Mintz Levin?
- 7 A. No.
- Q. What type of work did Mintz Levin do
- 9 for CVS, just generally? I don't need the
- 10 specifics.
- 11 A. Generally real estate matters.
- 12 Q. Is that related to the purchase of
- various pharmacies, or could you be a little bit
- more specific without revealing a privilege?
- 15 A. It was more general real estate
- 16 matters than acquisitions, as far as I recall.
- Q. But you didn't --
- 18 A. I didn't work on any of them, so...
- 19 Q. Okay. And then you came to work for
- 20 CVS, is that right?
- 21 A. Yes.
- Q. And what year was that?
- A. That was August of 1997.
- Q. Okay. What were you hired to do for

- 1 CVS?
- 2 A. I was a corporate lawyer.
- Q. For CVS Health, or what was the name
- 4 of the entity that hired you?
- 5 A. CVS Pharmacy, Inc., a Rhode Island
- 6 corporation.
- 7 Q. And where were you based?
- 8 A. In Woonsocket, Rhode Island.
- 9 Q. Is that where you're based today?
- 10 A. Yes.
- 11 Q. How is it that you came to be hired by
- 12 CVS?
- 13 A. A long story, but essentially it was
- the lead real estate partner at Mintz, Levin
- 15 talking to the general counsel at CVS and the
- 16 general counsel saying, we're looking for a
- 17 corporate guy, do you know anybody, and the real
- 18 estate partner said -- came to me and said, you
- 19 know, don't take this the wrong way but CVS is
- looking for a guy like you, and I said, don't
- take this the wrong way but sign me up, and so I
- went for an interview, and the rest is history.
- Q. Okay. Do you recall what the name of
- your position was when you started at CVS?

- 1 A. Legal counsel.
- Q. And how long did you serve in that
- 3 role?
- 4 A. Probably three years or so.
- 5 Q. Okay. Could you give me a sort of
- 6 snapshot of your work history with CVS from 1997
- 7 until today and the various positions that
- 9 you've held for CVS Pharmacy?
- 9 A. That's a pretty long snapshot. So
- 10 I've always been a corporate lawyer, general
- 11 corporate law. I do a wide variety of corporate
- 12 matters for CVS, always have. For many years I
- was the only corporate lawyer at CVS. And so I
- was legal counsel first, then senior legal
- 15 counsel, then assistant general counsel, vice
- 16 president and assistant general counsel.
- 17 Q. If I could just interrupt you real
- 18 quickly?
- 19 A. Sure.
- Q. Can you give me some sense of the
- years when you became senior legal counsel and
- 22 then vice president and assistant --
- 23 A. Senior legal counsel was probably
- 24 around 2000, somewhere in that time frame.

- 1 Assistant general counsel would have been around
- 2 2005 or so. Then I was vice president 2007 or
- 3 '8, something like that, and for a brief period
- 4 of time I served as the corporate secretary of
- 5 the public company. I've been assistant
- 6 secretary of the public company for several
- years now. So I've held a variety of titles.
- 8 My employer has always been CVS Pharmacy, Inc.,
- 9 and then I have various titles with other
- 10 entities.
- 11 Q. You said that you were a corporate
- 12 secretary for the public company. Is the public
- company CVS Pharmacy, Inc.?
- 14 A. No.
- Q. What is the public company?
- 16 A. CVS Health Corporation is the current
- 17 name.
- 18 Q. And in what position did you serve?
- 19 You said secretary?
- 20 A. I was vice president and corporate
- secretary from 2011 through the end of 2013, and
- 22 I've been assistant secretary from 2013 to the
- present, vice president and assistant secretary.
- Q. Why were you asked, if you know, to

- 1 hold that position?
- MR. DELINSKY: I would just like to
- 3 object on privilege grounds.
- 4 Mr. Moffatt, if you can answer without
- 5 disclosing an attorney/client confidence, you
- 6 can answer. Otherwise I instruct you not to
- 7 answer.
- 8 A. I don't know why.
- 9 BY MR. ELSNER:
- Q. Was it a result of pending litigation?
- 11 A. I can say that it was not a result of
- 12 litigation.
- Q. Who asked you to serve in that role?
- 14 A. It would have been Doug Sgarro who was
- the executive vice president and chief legal
- officer. The corporate secretary retired from
- 17 the company, and I became -- I was, you know,
- 18 kind of his second-in-command, so when he
- 19 retired I moved up.
- Q. You also served as the treasurer and
- 21 secretary of CVS Indianapolis which is the
- distribution center for CVS in Indiana, is that
- 23 right?
- A. I don't recall serving as treasurer.

- 1 I believe I was secretary.
- Q. All right. And was that from 2006 to
- 3 2011?
- 4 A. That sounds about right. We have many
- 5 entities, and keeping track of my specific title
- 6 with each entity is difficult.
- 7 Q. How many entities do you serve as an
- 8 officer of for CVS?
- 9 A. I don't know exactly, but hundreds.
- 10 Q. Why?
- 11 A. Mostly for administrative convenience.
- 0. Administrative convenience to whom?
- 13 A. To the organization.
- Q. What organization are you referring to
- when you say that?
- 16 A. So there are 800-plus entities in the
- 17 CVS family of entities, and in order to provide
- 18 services to those entities I need to be able to
- 19 sign documents and so forth for the various
- 20 entities.
- 0. So it's a convenience -- is it a
- 22 convenience to CVS Health, or is it a
- 23 convenience to the entities themselves?
- A. It's to the entities themselves,

- because they all -- many of them need licenses,
- leases, that sort of thing, so it's in order for
- 3 them to operate properly.
- 4 Q. When did the Indianapolis distribution
- 5 center for CVS start operations?
- A. I don't know exactly. We acquired it
- 7 in the Revco acquisition, which was just before
- 8 I joined the company, so in 1997. I'm not sure
- 9 when it was first built or anything.
- 10 Q. But then you joined as a secretary of
- 11 CVS Indiana in 2006, is that right?
- 12 A. I believe the entity was formed
- shortly before then, so when the entity was
- 14 formed I was either secretary or assistant
- secretary.
- Q. Who asked you to play that role?
- 17 A. It would have been my immediate
- 18 superior, Zenon Lankowsky.
- 19 Q. How large is the legal department at
- 20 CVS?
- MR. DELINSKY: Object to form.
- 22 A. I don't know exactly, depends on who
- you count, but in terms of lawyers
- post-acquisition it's over 100 lawyers, and then

- 1 there's paralegals and support staff and clerks
- and so forth, so it's several hundred people.
- 3 BY MR. ELSNER:
- Q. Okay. In 2012 you became the
- 5 president of CVS Indiana, is that right?
- 6 A. Yes.
- 7 Q. Why was that?
- 8 A. It was in connection with the
- 9 retirement of Mr. Lankowsky.
- 10 Q. He was the previous president?
- 11 A. Yes.
- 12 Q. And have you served as president of
- 13 CVS Indiana since 2014?
- 14 A. I believe so. Since before that, I
- think you said it was 2012.
- 16 Q. That's right. I just said dates of
- through 2014, so I was curious whether you
- 18 continued to perform that role.
- 19 A. Past that, yes.
- Q. And you're the president today?
- 21 A. Yes.
- Q. All right. Can you explain to me what
- your duties and responsibilities are as
- 24 president of CVS Indiana?

- 1 A. It's principally an administrative
- function, so CVS Indiana needs a wide variety of
- 3 licenses and other documents that need to be
- 4 signed, and I sign documents on behalf of that
- 5 entity and the other entities.
- 6 O. Are there board meetings for CVS
- 7 Indiana?
- 8 A. Yes.
- 9 Q. Do you attend those?
- 10 A. Yes.
- 11 Q. How often are those held?
- 12 A. Annually.
- Q. Where are they held?
- 14 A. At CVS headquarters.
- Q. Who attends the board meetings
- 16 generally?
- 17 A. Actually let me take a step back. I
- was mistaken there. For CVS Indiana it's an LLC
- that doesn't have a board, so we don't really
- 20 have board meetings. We have, you know -- the
- 21 member would meet of CVS Indiana, and the member
- is a sole member, so I sign -- typically we do
- 23 actions by written consent of the member, and I
- 24 execute those.

- 1 Q. So there are no annual or quarterly
- 2 meetings of CVS Indiana?
- 3 A. It doesn't --
- 4 MR. DELINSKY: Object to form.
- 5 A. It doesn't have a board, so it doesn't
- 6 have board meetings.
- 7 BY MR. ELSNER:
- 8 Q. But you said that the member signs the
- 9 documents, and it's all by consent, and you are
- the member, is that right?
- 11 A. Well, there's -- a corporation is the
- member. CVS Pharmacy, Inc. is the member.
- Q. Okay. Are there minutes of those
- 14 meetings?
- 15 A. There would either be minutes, or
- 16 there would be a consent.
- Q. Do you recall meetings in which there
- were minutes taken for CVS Indiana?
- 19 A. I don't recall all the meetings that I
- 20 took part in.
- Q. And have you been to the facility at
- 22 CVS Indiana?
- A. No, I have not.
- Q. Do you interact with the management

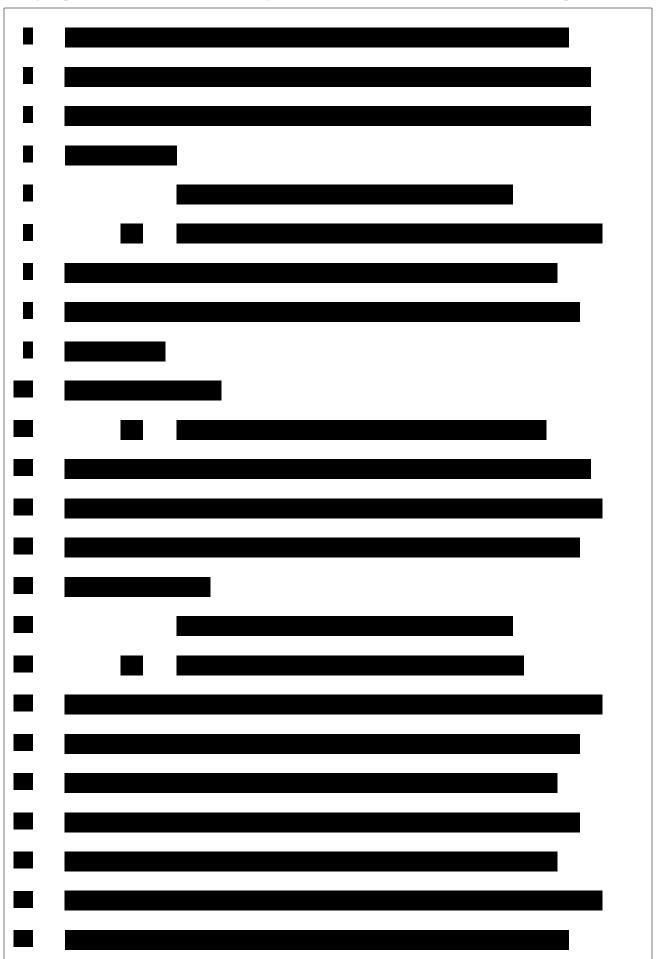
- 1 and staff of CVS Indiana?
- A. No, not on a regular basis.
- Q. Do they keep you apprised of the
- 4 activities of CVS Indiana?
- 5 A. There are others at CVS that are
- 6 responsible for operations of the distribution
- 7 centers. They would keep them apprised. They
- 8 wouldn't keep me apprised.
- 9 Q. They don't keep you apprised as
- 10 president?
- 11 A. They keep the people that need to be
- 12 apprised.
- Q. And generally what are those offices
- within CVS headquarters that are apprised?
- 15 A. It would be the logistics department
- is generally responsible for distribution center
- operations and transportation.
- 18 Q. You're also the president of CVS Rx
- 19 Services, Inc., is that right?
- 20 A. That's correct.
- Q. And when have you served in that role?
- A. I believe since 2012, same time as
- 23 Indiana.
- Q. Were you formerly a secretary or

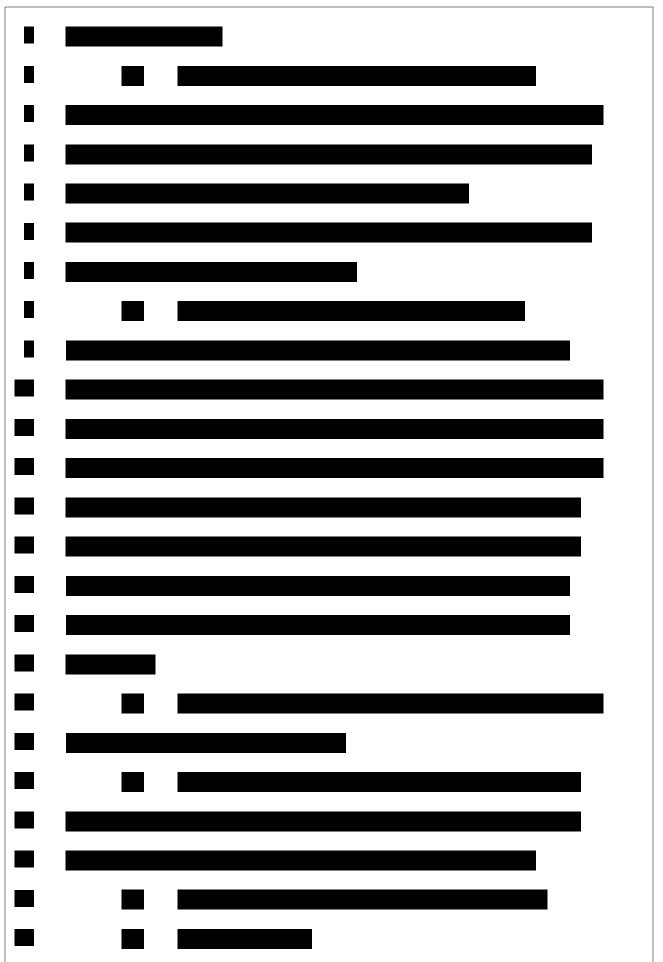
- 1 treasurer of CVS Rx Services, Inc.?
- 2 A. I don't recall my exact titles, but in
- 3 all likelihood I would have been secretary
- 4 before I became president.
- 5 Q. What does CVS Rx Services do?
- 6 A. It was originally formed as the
- 7 employer of our pharmacists in the various
- 8 stores.
- 9 Q. When?
- 10 A. When was it formed? I don't know
- exactly. Probably around the late '90s, 1998,
- 19 '99, something like that, I believe.
- Q. Okay. So are all pharmacists of CVS
- 14 and CVS pharmacies employees of CVS Rx Services?
- 15 A. There are others that are responsible
- 16 for keeping track of who is employed by who, but
- my understanding is yes.
- Q. Okay. And what about the pharmacy
- 19 itself, is the pharmacy itself organized under
- 20 CVS Rx Services, or is it just the pharmacists?
- MR. DELINSKY: Object to form.
- A. Generally speaking, the pharmacies
- would be in different store operating entities.
- 24 BY MR. ELSNER:

- Q. We received a response to a request,
- 2 and the response stated that CVS Rx Services
- distributed hydrocodone combination products
- 4 into track 1 jurisdictions between April 15,
- 5 2014 and September 30, 2014, and then it refers
- 6 to something called the Chemung distribution
- 7 period. Do you know what that is, the Chemung
- 8 distribution period?
- 9 A. I know that we have a distribution
- 10 center in Chemung, New York.
- 0. And is that distribution center
- organized under CVS Rx Services?
- MR. DELINSKY: Object to form.
- 14 A. Chemung is operated by CVS Rx
- 15 Services, Inc.
- 16 BY MR. ELSNER:
- Q. Okay. And do you know why CVS was
- 18 distributing hydrocodone products into Summit
- 19 counties and Cuyahoga counties in Ohio between
- 20 April 15th, 2014 and September 30th, 2014?
- MR. DELINSKY: Object to form.
- 22 A. I don't know. I don't know that
- that's the case. I know that others at CVS
- would have been responsible for which

- distribution centers would distribute into which
- 2 stores.
- 3 BY MR. ELSNER:
- 4 Q. So as president of CVS Rx Services,
- 5 what are your roles and responsibilities?
- 6 A. Again, it's principally administrative
- 7 to sign various licenses and documents that CVS
- 8 Rx Services needs to sign.
- 9 Q. Have you ever been to the Chemung
- 10 distribution center?
- 11 A. No, I have not.
- 12 Q. The whole period of time when you've
- been operating as the president of CVS Indiana
- 14 and the president of CVS Rx Services, you always
- worked out of the office in Rhode Island for
- 16 CVS, is that right?
- 17 A. That's correct, I've only worked out
- 18 of the Woonsocket office.
- 19 Q. Okay. Are there board meetings or
- 20 minutes of meetings related to CVS Rx Services?
- 21 A. Yes.
- Q. And how often do you meet?
- A. It would be annually.
- Q. And where are those meetings held?

- 1 A. At Woonsocket.
- Q. Do you receive any compensation from
- 3 CVS Indiana or CVS Rx Services for your role as
- 4 president of those entities?
- 5 A. Unfortunately, no.
- 6 Q. So all of your payment is from CVS
- 7 Health?
- 8 A. It's from CVS Pharmacy is my employer,
- 9 and it's as a corporate attorney.
- Q. Can you explain to me the relationship
- between CVS Pharmacy, CVS Health, and CVS
- 12 Indiana, and CVS Rx Services?
- MR. DELINSKY: Object to form.
- 14 A. That's a very broad question. CVS
- 15 Health Corporation is the public company. It's
- 16 a holding company. It's formed in Delaware and
- doesn't have any employees. CVS Pharmacy is our
- main operating company. It's a Rhode Island
- 19 corporation. It employs me. It employs a
- 20 number of people. And then CVS Pharmacy is the
- 21 parent company to Rx Services and CVS Indiana
- 22 and a large number of other entities.
- 23 BY MR. ELSNER:





- 1 Q. I think you also said that you have
- 2 responsibility at CVS for licensing issues.
- 3 Does that include DEA licenses?
- 4 MR. DELINSKY: Object to form.
- 5 A. So I said that I sign documents
- 6 related to licensing, so it would -- well, I
- 7 also have people that work for me that are
- 8 responsible for signing DEA documents, but I
- 9 have signed DEA documents in the past.
- 10 BY MR. ELSNER:
- 0. Are you the head of the licensing
- 12 division for CVS?
- MR. DELINSKY: Object to form.
- A. We don't have a licensing division, so
- licensing is one of our functions in the legal
- 16 department, and the licensing -- the head of
- 17 licensing is a licensing director, and she
- 18 reports to me.
- 19 BY MR. ELSNER:
- Q. Okay. And how many people are under
- 21 her?
- 22 A. 30 plus.
- Q. And who is that licensing director?
- A. Her name is Linda Cimbron.

- Q. So I'm just taking a look at your
- 2 LinkedIn page, and it's written here, it says --
- 3 it describes you as the vice president,
- 4 assistant secretary and assistant general
- 5 counsel for CVS Health Corporation. And that's
- 6 your current role, is that right?
- 7 A. That's my role with CVS Health
- 8 Corporation, yes.
- 9 Q. And then it says under here, it says
- 10 Licensing, and it says "Oversees the licensing
- department which obtains and maintains all
- licenses for the company's 10,000-plus
- facilities, over 150,000 licenses," is that
- 14 correct?
- 15 A. That's correct. As I said, Linda
- 16 Cimbron, licensing director, reports to me. So
- 17 I oversee the licensing function.
- 18 Q. So you oversee the licensing
- 19 department?
- 20 A. Yes.
- Q. And then it says "Interacts with
- government officials including DEA, state boards
- of pharmacy, and alcohol boards." Is that
- 24 accurate?

- 1 A. It was more accurate a couple years
- 2 ago when that was written. Now we have a board
- of pharmacy practice that does a lot more of the
- 4 interaction with the boards of pharmacy. We
- 5 also have an attorney that works on government
- 6 investigations, including DEA. So, you know,
- 7 it's not as accurate today as it was several
- 8 years ago.
- 9 O. When was this written?
- 10 A. I don't remember. A couple years ago,
- 11 I think. I might have updated numbers, but I
- 12 haven't changed a lot of it.
- Q. Every CVS distribution center,
- 14 including CVS Indiana, holds a DEA license, is
- 15 that right?
- 16 A. I don't recall if they all have --
- take a step back. We used to have distribution
- 18 centers that had full registrations, and then we
- 19 had other facilities that did what was called
- 20 cross-talking, so they wouldn't necessarily have
- 21 drugs in the facility. I don't recall what the
- 22 current structure of the distribution centers
- is, so I don't know if every one of them has.
- Q. Okay. But in order to distribute a

- 1 controlled substance, you need a DEA license to
- 2 do so, is that right?
- MR. DELINSKY: Object to form.
- 4 A. Yes, I believe that's right.
- 5 BY MR. ELSNER:
- 6 Q. And CVS Indiana had a DEA license to
- 7 distribute controlled substances, is that right?
- 8 A. It definitely had a DEA registration,
- 9 yes.
- 0. And is the same true for the CVS
- 11 facility, the distribution center in Chemung,
- 12 New York?
- 13 A. Yes.
- Q. What about CVS Pharmacy, does CVS
- 15 Pharmacy have its own DEA license?
- MR. DELINSKY: Object to form.
- 17 A. So the DEA registrations are by
- 18 facility, so there are facilities that CVS
- 19 Pharmacy, Inc. operates that have DEA
- registrations, there are actually many.
- 21 BY MR. ELSNER:
- Q. And is it CVS Pharmacy which holds
- those licenses, or it's the entities themselves?
- 24 A. The entities them -- the entities that

- operate the facilities would hold the licenses,
- 2 so in some instances that is CVS Pharmacy, in
- 3 some instances it's another entity like CVS
- 4 Indiana or CVS Rx Services.
- 5 Q. What is your understanding of why the
- 6 DEA requires distributors and dispensers of
- 7 controlled substances to have a DEA
- 8 registration?
- 9 MR. DELINSKY: Object to form.
- 10 A. I haven't really thought of it. It's
- 11 been a requirement under their regulations, but
- 12 you'd have to ask somebody at the DEA why they
- 13 regulate the way they regulate.
- 14 BY MR. ELSNER:
- Q. Well, you're in charge of the whole
- licensing department, everyone reports to you,
- 17 so I wanted to understand from you what you
- 18 believe the reason is that the DEA has a
- 19 registration requirement for distributing and
- dispensing controlled substances.
- MR. DELINSKY: Object to form.
- A. Again, you'd have to ask somebody at
- the DEA why they have regulations. I'm not
- sure. I know that they need to -- we have

- 1 separate registrations for every facility so
- they want the facilities that have controlled
- 3 substances to be registered in some way.
- 4 BY MR. ELSNER:
- 5 Q. Why?
- 6 A. So I don't know.
- 7 Q. Are you familiar with the Controlled
- 8 Substances Act?
- 9 A. Generally, yes.
- 10 Q. What is your understanding of the
- 11 Controlled Substances Act?
- MR. DELINSKY: And, Mr. Moffatt, if
- 13 you can answer that question without it
- disclosing attorney/client confidences you may
- 15 answer. If you can't, I instruct you not to
- 16 answer.
- 17 BY MR. ELSNER:
- 0. Sir, you're a lawyer. You understand
- 19 attorney/client confidences and privileges?
- MR. DELINSKY: Object to form.
- 21 A. Generally speaking, yes.
- 22 BY MR. ELSNER:
- Q. So throughout this whole deposition,
- 24 I'm not trying to elicit a single response that

- discloses any kind of attorney/client privilege,
- 2 so there's no need for a continued objection to
- 3 that. When I ask you a question, I want you to
- 4 assume that I'm not asking you to divulge any
- 5 attorney/client privilege. Do you understand
- 6 that?
- 7 A. I understand you saying that, but it's
- 8 difficult given my role -- my principal role
- 9 being an attorney and interacting with other
- 10 attorneys all day every day, it's hard to
- 11 separate, you know, what I know based on
- discussions with the people that have expertise
- in the Controlled Substances Act as opposed to
- me. I'm a corporate lawyer, so general
- 15 corporate law I know.
- 16 Q. That's fine. What is your
- understanding of the Controlled Substances Act?
- MR. DELINSKY: Same objection and
- 19 instruction.
- 20 A. I don't have a specific understanding
- of the Controlled Substances Act. I know it's a
- law that's out there.
- 23 BY MR. ELSNER:
- Q. Have you ever read it?

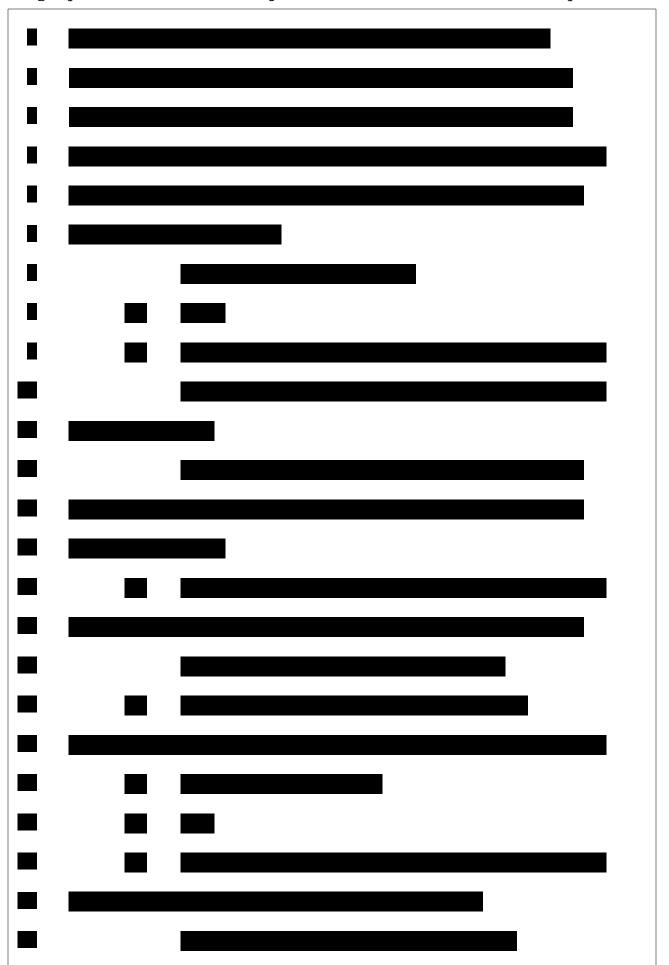
- 1 A. No, I have not read the act in its
- 2 entirety.
- Q. Do you understand that controlled
- 4 substances are highly addictive?
- 5 MR. DELINSKY: Object to form.
- A. I don't know. No, I don't know that
- 7 controlled substances are -- I think there are
- 8 other people at CVS that will respond -- that
- 9 are focused on that sort of thing.
- 10 BY MR. ELSNER:
- 0. So as the president of CVS Indiana and
- 12 as the president of CVS Rx Services, you do not
- 13 know that controlled substances can be highly
- 14 addictive?
- MR. DELINSKY: Object to form.
- 16 A. Others at CVS are responsible for
- operations and so forth, and I have no view on
- 18 that.
- 19 BY MR. ELSNER:
- Q. I'm not asking whether anybody else
- 21 knows they're highly addictive. I'm just asking
- you, are controlled substances highly addictive?
- MR. DELINSKY: Object to form.
- 24 BY MR. ELSNER:

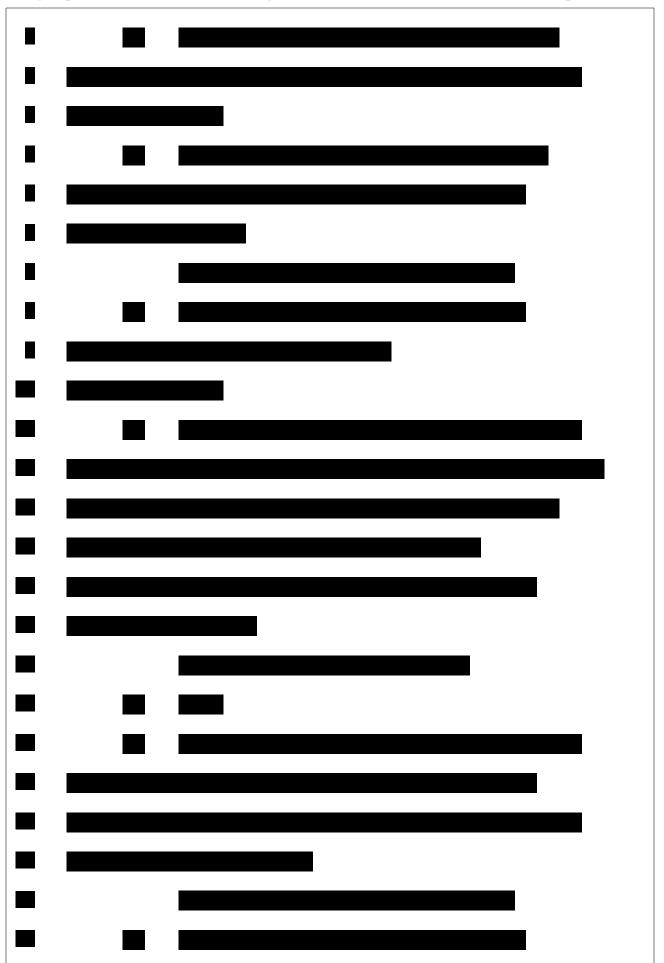
- 1 Q. Yes, no, or I don't know.
- 2 A. Other people at CVS know. I don't
- 3 have an opinion on that.
- 4 Q. You don't know?
- MR. DELINSKY: Object to form.
- 6 A. Other people at CVS know. I don't
- 7 have an opinion.
- 8 BY MR. ELSNER:
- 9 Q. You don't have an opinion one way or
- 10 the other?
- MR. DELINSKY: Object to form. Asked
- 12 and answered.
- 13 A. Other people at CVS know about that.
- 14 It's not my role, and I don't have an opinion.
- 15 BY MR. ELSNER:
- Q. Do you believe that there's a risk
- that controlled substances like an opioid may be
- 18 diverted?
- MR. DELINSKY: Object to form.
- 20 A. Other people at CVS are responsible
- 21 for operations and so forth. I don't have an
- 22 opinion on that.
- 23 BY MR. ELSNER:
- Q. Has CVS ever distributed a Schedule II

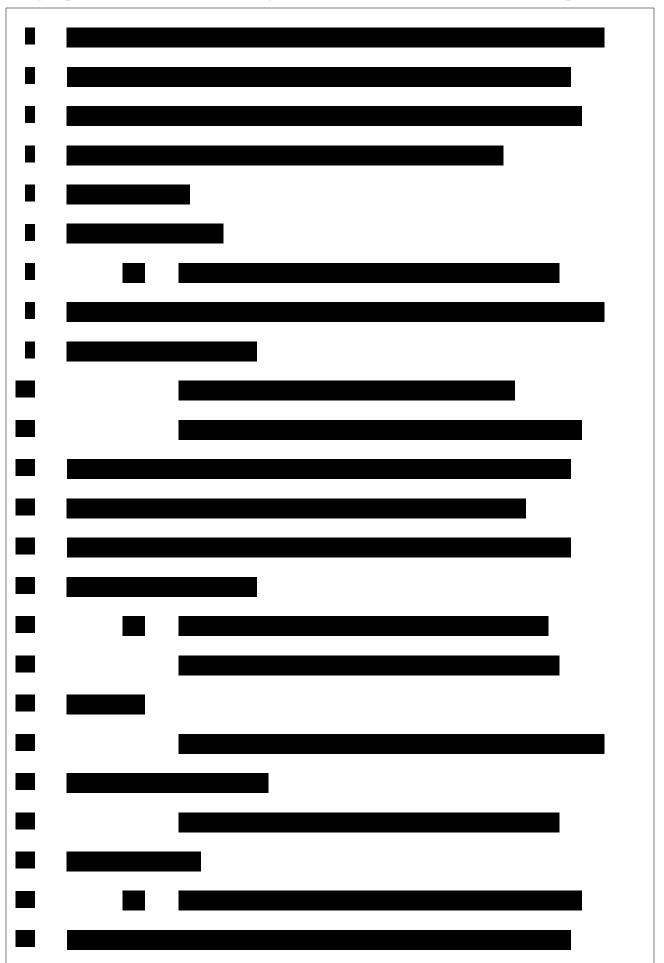
- 1 drug, to your knowledge?
- 2 A. To my knowledge, no.
- Q. Why not?
- 4 MR. DELINSKY: Same instruction with
- 5 regard to the attorney/client privilege, to the
- 6 extent that your knowledge is based on
- 7 attorney/client communications.
- 8 A. Other people at CVS made that
- 9 decision. You know, I've been there since '97.
- 10 The company has been around longer than that.
- 11 It was before I got there.
- 12 BY MR. ELSNER:
- Q. So you don't know?
- 14 A. Other people at CVS would have been
- 15 responsible for that.
- 16 Q. Who?
- 17 A. I'm not sure.
- 18 Q. Are you sure someone is responsible
- 19 for that?
- 20 A. Other people at CVS are responsible
- 21 for all the operations, compliance, logistics.
- We have huge departments that are responsible
- for those things. I'm not responsible for those
- 24 things.

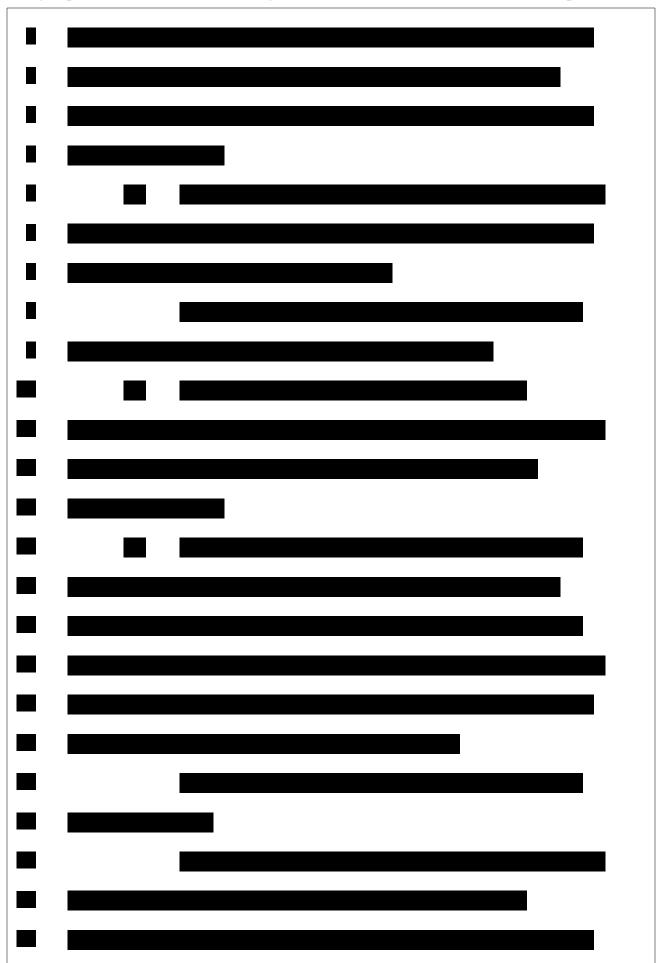
- 1 Q. CVS has distributed Schedule III drugs
- 2 to CVS pharmacies, is that right?
- MR. DELINSKY: Object to form.
- 4 A. My understanding is that our
- 5 registrations are for Schedules III through V,
- 6 so yes.
- 7 BY MR. ELSNER:
- 8 O. And CVS Indiana and CVS Rx Services
- 9 through the CVS Chemung distribution center
- distributed Schedule III drugs, is that correct?
- MR. DELINSKY: Object to form.
- 12 A. Other people at CVS were responsible
- 13 for the actual operations, but my understanding
- is we had the registrations for Schedules III
- through V, and that's what was distributed by
- 16 those distribution centers.
- 17 BY MR. ELSNER:
- 18 O. And that they distributed those drugs
- 19 into Cuyahoga and Summit Counties, is that
- 20 right?
- MR. DELINSKY: Object to form.
- 22 A. I don't have any specific knowledge of
- where the distribution centers distributed.
- 24 BY MR. ELSNER:

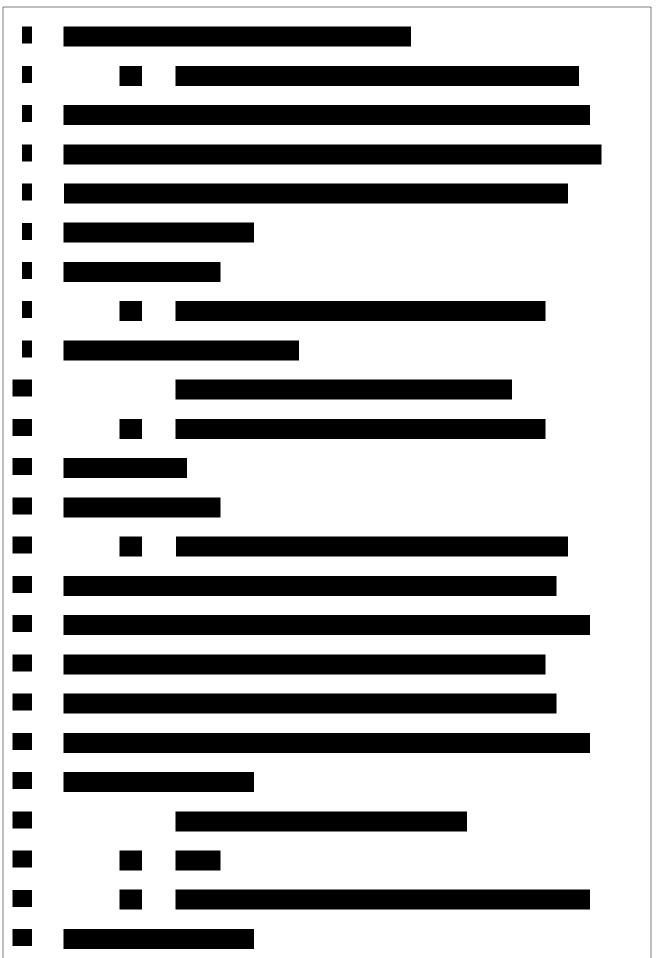
- 1 O. The Indiana distribution center for
- 2 CVS was distributing hydrocodone products until
- 3 hydrocodone was rescheduled as a Schedule II
- 4 drug in October of 2014, is that right?
- 5 MR. DELINSKY: Object to form. Same
- 6 objection as to attorney/client privilege.
- 7 A. Other people at CVS were responsible
- 8 for what was distributed where. I don't have
- 9 any knowledge of my own on that subject.
- 10 BY MR. ELSNER:
- 11 O. So as the president of CVS Indiana,
- 12 you don't know whether CVS Indiana was
- distributing hydrocodone products until they
- were rescheduled?
- MR. DELINSKY: Object to form.
- 16 A. Others at CVS were responsible for
- 17 that. I don't have any knowledge of my own.
- 18 BY MR. ELSNER:
- 19 Q. I've marked this document as the first
- 20 exhibit. This is Motley Rice 5.
- 21 (Whereupon, CVS-Moffatt-1 was marked
- for identification.)
- 23 BY MR. ELSNER:

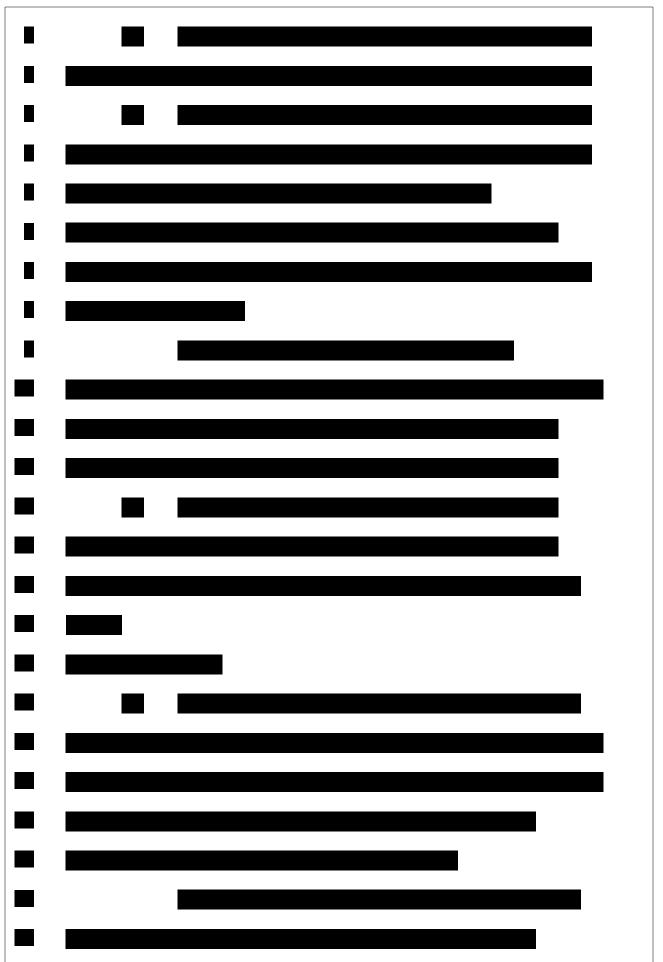


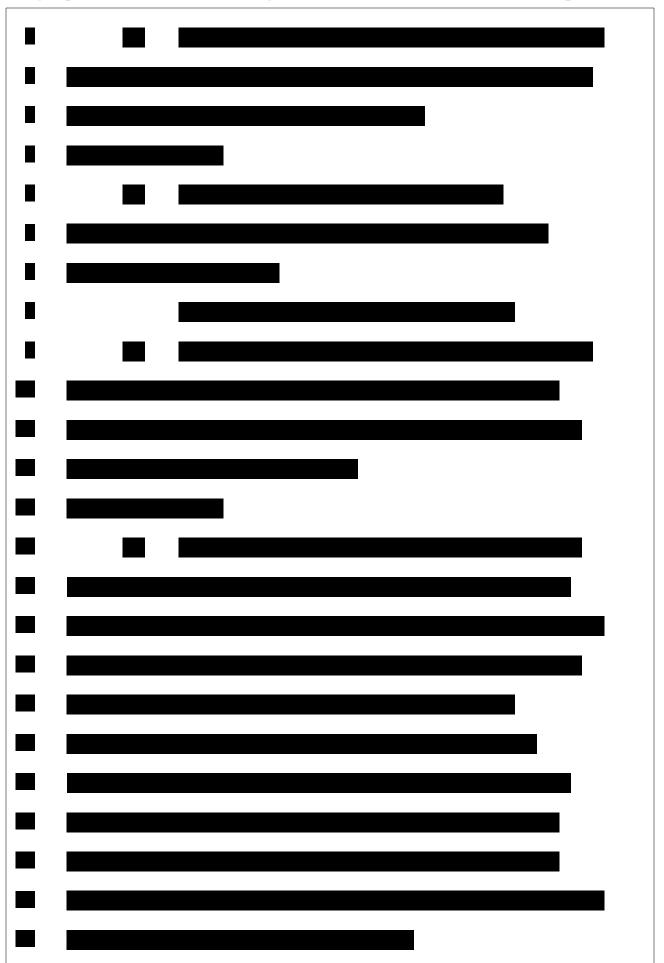


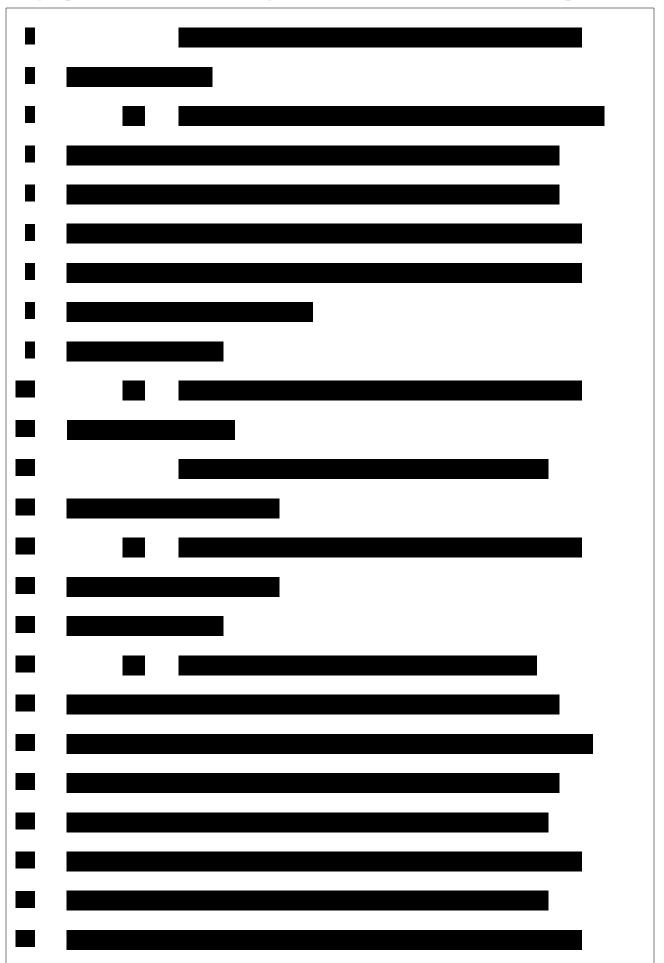


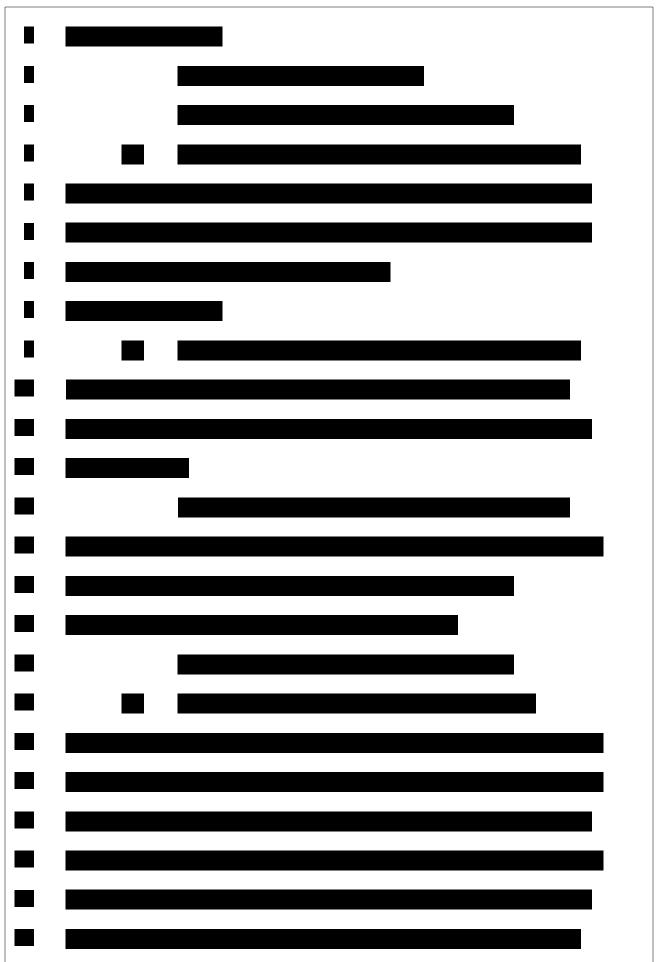


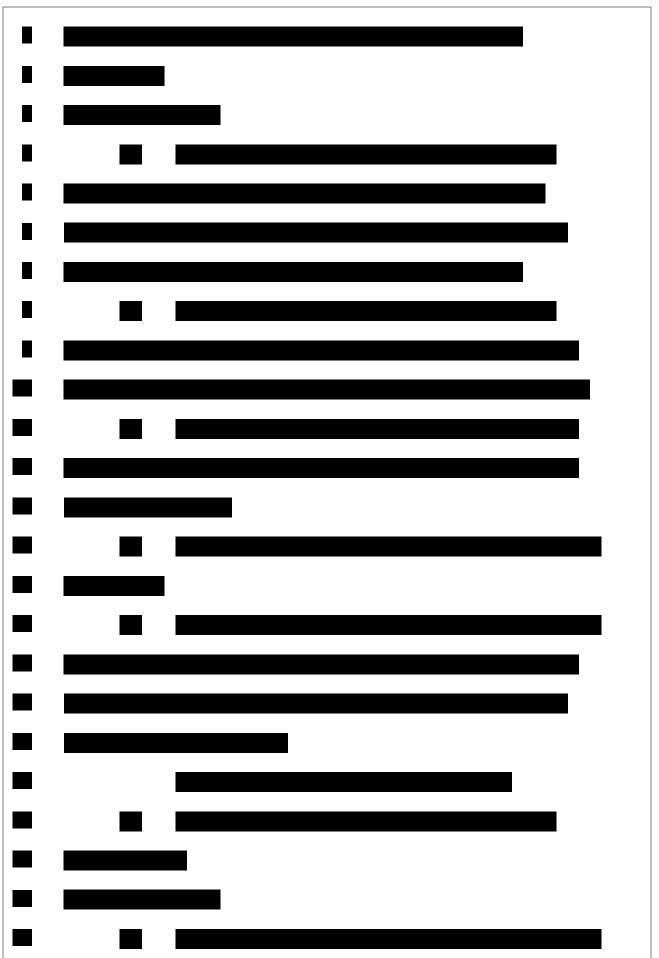


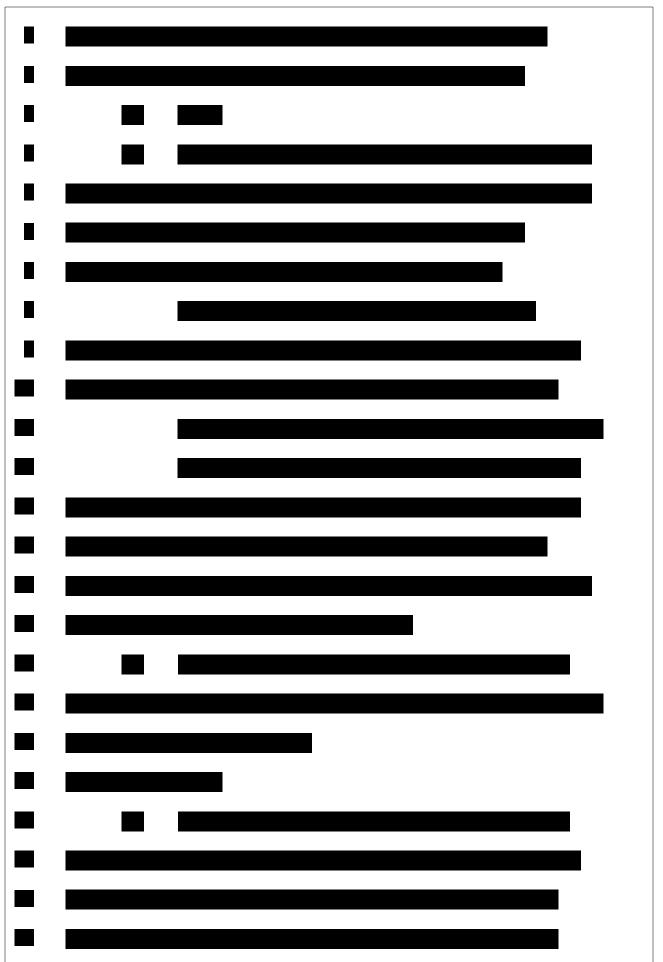


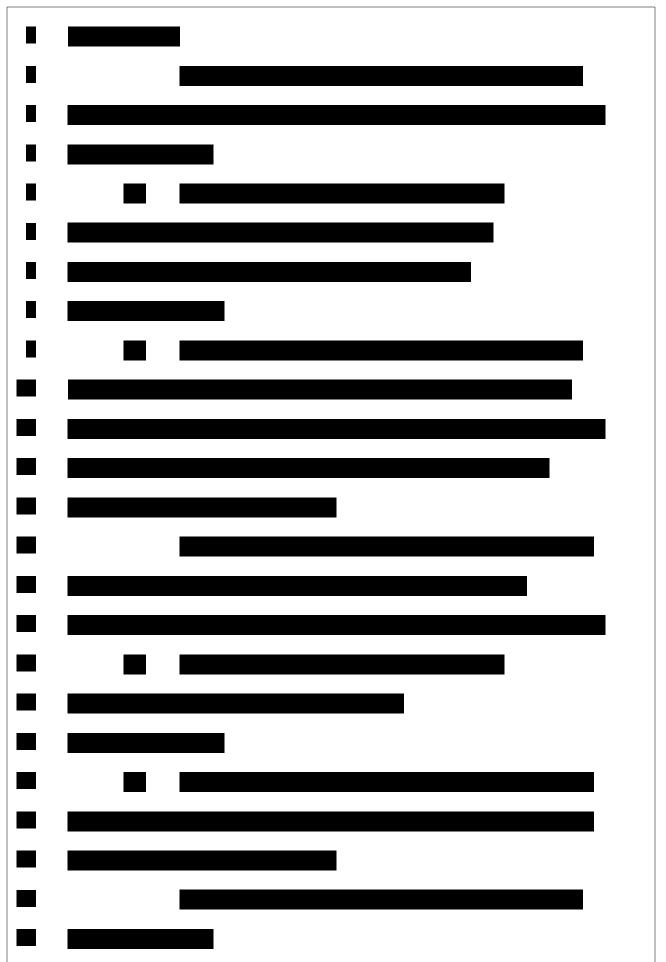


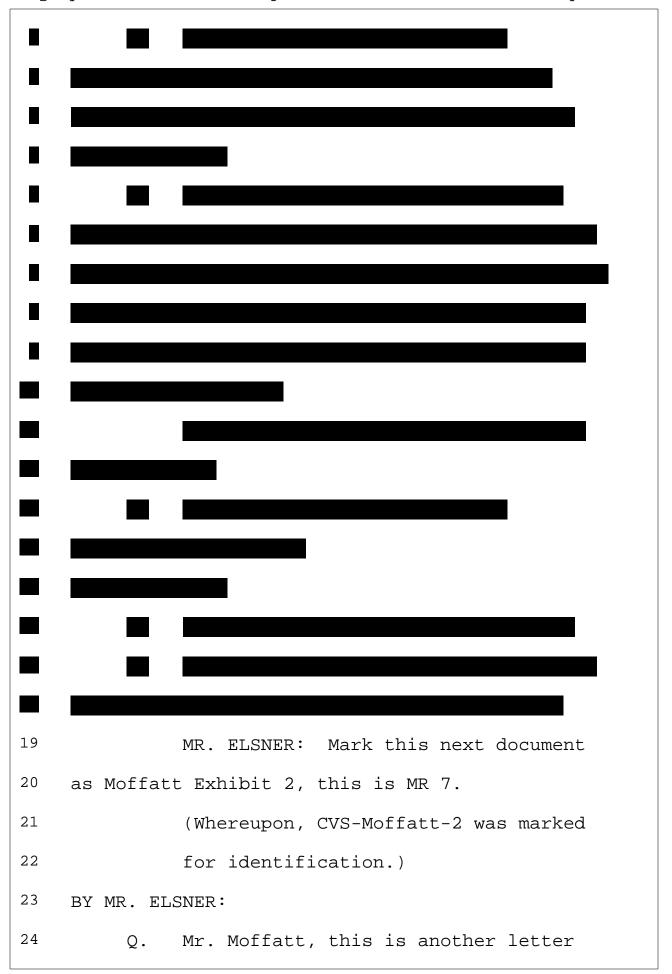












- 1 from Mr. Joseph Rannazzisi which was sent to all
- the distribution centers in the United States.
- 3 The date was December 27, 2007.
- 4 Have you ever seen this letter before
- 5 preparing for this deposition?
- 6 A. I don't recall if I've seen this
- 7 before. I didn't see it before preparing for
- 8 the deposition. I don't recall if I saw it in
- 9 connection with preparing.
- 0. Let me just break that down.
- Before your deposition prep with
- counsel, had you ever seen this letter before?
- 13 A. I don't think so.
- 0. Okav. The first line of the letter
- says that "This letter is being sent to every
- 16 entity in the United States registered with the
- 17 Drug Enforcement" Agency "to manufacture or
- distribute controlled substances."
- Did I read that correctly?
- 20 A. It's Drug Enforcement Administration.
- 21 You said agency.
- Q. I'm sorry.
- A. But otherwise, yes.
- Q. Okay. And as the head of licensing

- 1 for CVS, you do not recall ever receiving this
- document before?
- MR. DELINSKY: Object to form.
- A. I've seen many, many documents. I
- 5 don't specifically recall seeing this one. It's
- 6 over ten years ago.
- 7 BY MR. ELSNER:
- 8 Q. This, in the second paragraph in the
- 9 second sentence, it cites a code section, and
- then it says "specifically requires that a
- 11 registrant 'design and operate a system to
- disclose to the registrant suspicious orders of
- 13 controlled substances.'"
- 14 Did CVS in Indiana have a system in
- place as of December 27, 2007 to electronically
- 16 monitor for suspicious orders of controlled
- 17 substances?
- MR. DELINSKY: Object to form.
- 19 A. Others at CVS would have been
- 20 responsible for such a system. I believe this
- is the same code section as the previous
- 22 letter --
- 23 BY MR. ELSNER:
- Q. That's right.

- 1 A. -- from the previous year.
- Q. It's the Controlled Substances Act,
- 3 that's right.
- 4 Does it concern you that CVS didn't
- 5 have a system in place to electronically monitor
- 6 for suspicious orders of controlled substances
- 7 as of December 27, 2007?
- 8 MR. DELINSKY: Object to the form of
- ⁹ the question.
- 10 A. Others at CVS would have been
- 11 responsible for such a system.
- 12 BY MR. ELSNER:
- Q. Do you understand that a violation of
- 14 the Controlled Substances Act could result in a
- distribution center losing its license to
- 16 distribute controlled substances?
- 17 A. I'm generally aware of, you know, the
- implications of violations, but I have no
- 19 specific knowledge. It's not my area of
- 20 expertise. I'm a corporate lawyer.
- Q. But you understand that CVS and other
- 22 pharmacies from time to time have had their
- licenses suspended, correct?
- MR. DELINSKY: Object to the form of

- 1 the question.
- Mr. Moffatt, further object on
- privilege grounds. To the extent that you
- 4 possess any responsive information that you
- 5 obtained in the context of attorney/client
- 6 communications, I instruct you not to disclose
- 7 that information.
- 8 A. Information that it would have
- 9 received regarding other pharmacies or CVS would
- 10 have been through attorney communications.
- 11 BY MR. ELSNER:
- Q. Well, you've signed settlements with
- the DEA in which you entered a settlement with
- 14 them to avoid the suspension of your
- registration for a pharmacy, correct?
- MR. DELINSKY: Object to the form of
- 17 the question.
- 18 A. I have signed settlements for various
- 19 entities, other attorneys work on those
- 20 settlements and they come to me at the end when
- they're ready to be signed. I don't know the
- 22 background as to why things were signed or
- whether they were signed to avoid a suspension
- or anything like that. I've signed documents,

- 1 but I don't know the full circumstances. You'd
- 2 have to give me the actual settlement that
- you're talking about.
- 4 BY MR. ELSNER:
- 5 Q. Well, I'm just talking generally.
- 6 You understand the DEA has the
- 7 authority and the ability to suspend or remove a
- 8 license for a distributor to distribute a
- 9 controlled substance, you understand that,
- 10 right?
- MR. DELINSKY: Object to form. Same
- objection and same instruction as to privilege
- 13 in addition.
- 14 A. I'm aware based on attorney
- 15 communications.
- 16 BY MR. ELSNER:
- 17 Q. What was your understanding of why a
- 18 license was required at all to distribute
- 19 controlled substances?
- MR. DELINSKY: Object to form. Same
- objection and instruction to the extent the
- 22 question also implicates attorney/client
- 23 communications.
- A. As we discussed earlier, the DEA set

- 1 up the regulatory regime. I don't have
- information as to why it was set up the way it
- 3 was set up.
- 4 BY MR. ELSNER:
- 5 Q. So you were just signing paper and
- 6 moving paper, right? You don't understand what
- 7 the basis or need is for the license, why it's
- 8 required and what could result if you don't
- 9 fulfill your responsibilities?
- MR. DELINSKY: Object to form. Same
- objection and same instruction as to privilege
- 12 to the extent it pertains.
- 13 A. What I know about it is based on
- 14 attorney communications.
- 15 BY MR. ELSNER:
- 16 Q. I'm not talking about a specific
- 17 instance. I'm talking generally.
- 18 You're the head of the licensing
- department, you oversee them, and you have no
- 20 understanding of what the purpose of the license
- is for the controlled substance or what could
- result if you don't fulfill the requirements of
- the Controlled Substances Act, is that right?
- MR. DELINSKY: Object to the form of

- 1 the question. Further object on privilege
- 2 grounds.
- 3 To the extent this calls for
- 4 attorney/client communications, I'd instruct you
- 5 not to answer, Mr. Moffatt.
- And I'd just state for the record that
- 7 the attorney/client privilege applies to -- not
- 8 only to information exchanged in connection with
- 9 specific instances, but also to general
- information exchanged for the purpose of
- 11 obtaining legal advice.
- 12 A. So other people at CVS are responsible
- for operations and compliance, and they
- understand the implications of, you know, the
- 15 need for licenses and for violations.
- 16 BY MR. ELSNER:
- 17 Q. I'm not asking you what anyone else
- understands about the licensing requirements.
- 19 I'm just asking you, because you're the head of
- the licensing department, you oversee it, and
- you have no understanding of the reason for the
- license or the consequences of not fulfilling
- your obligations under the controlled substances
- 24 and its implications for your ability to lose

- 1 the license, is that right?
- MR. DELINSKY: Object to form. Same
- 3 objection as to privilege. Same instruction as
- 4 to privilege.
- 5 A. That's not right. I have information,
- 6 but all my information would have been received
- 7 in the context of attorney information being
- 8 passed to me from other areas of the legal
- 9 department.
- 10 BY MR. ELSNER:
- 11 O. That simply can't be true. I'm not
- 12 asking you about a particular instance or
- investigation. I'm asking you generally as the
- 14 head of the licensing department, do you have an
- understanding of what the licensing requirements
- were for distributing controlled substances?
- MR. DELINSKY: Object to the form of
- 18 the question.
- 19 I instruct the witness not to answer
- 20 based on his prior two answers.
- A. Again, my information was based on
- information I received from other attorneys.
- 23 BY MR. ELSNER:
- O. The next sentence in that same

- 1 paragraph reads "The regulation clearly
- 2 indicates that it is the sole responsibility of
- 3 the registrant to design and operate such a
- 4 system."
- 5 Did you understand that it was the
- 6 sole responsibility for CVS Indiana to design
- 7 and operate a system to prevent diversion of
- 8 controlled substances?
- 9 MR. DELINSKY: Object to the form of
- 10 the question.
- Same objection, same instruction,
- 12 Mr. Moffatt.
- 13 A. You read the sentence as it's written
- 14 here. I have no basis to agree or disagree with
- 15 the conclusion that it clearly indicates -- what
- 16 it says it indicates.
- 17 BY MR. ELSNER:
- 18 Q. Did you know that as the president of
- 19 CVS Indiana that it was CVS Indiana's sole
- responsibility to design such a system?
- MR. DELINSKY: Object to form. Asked
- 22 and answered.
- A. As I said, that's what the sentence
- 24 says, but I don't have any basis to agree or

- disagree that it's its sole responsibility.
- 2 BY MR. ELSNER:
- Q. And you never saw this in 2007?
- 4 MR. DELINSKY: Object to form. Asked
- 5 and answered.
- A. I don't recall seeing it. I see many,
- 7 many documents.
- 8 BY MR. ELSNER:
- 9 Q. Do you believe there's an opioid
- 10 crisis in the United States?
- MR. DELINSKY: Object to form.
- 12 A. I don't have any basis to characterize
- 13 anything as a crisis. I'm a corporate lawyer.
- 14 BY MR. ELSNER:
- Q. What's your understanding?
- MR. DELINSKY: Object to form.
- 17 Further object to the extent that that question
- 18 calls for the disclosure of attorney/client
- 19 privilege information.
- A. I don't have any personal information.
- 21 I've gathered information on -- you know, based
- on my services as an attorney for the company.
- 23 BY MR. ELSNER:
- Q. So you have no understanding at all

- whether there's an opioid crisis or not in the
- 2 United States?
- MR. DELINSKY: Object to the form of
- 4 the question. Asked and answered.
- 5 A. The information that I've received
- 6 would have been in the context of being a
- 7 corporate attorney.
- 8 BY MR. ELSNER:
- 9 O. So I want to drill down on this a
- 10 little bit.
- If someone told you that there was an
- opioid crisis in the United States, and you're
- 13 an employee of CVS, you would consider that a
- 14 privileged communication?
- 15 A. It would depend on the context. I
- don't think anybody would come out of the blue
- 17 and just walk up to me and say that.
- Q. So you've never heard -- have you ever
- 19 heard that there's an opioid crisis in the
- 20 United States?
- MR. DELINSKY: Object to the form.
- 22 Asked and answered. I instruct the witness not
- 23 to answer further.
- 24 BY MR. ELSNER:

- 1 Q. Are you going to answer the question?
- 2 A. I was instructed not to answer. No.
- MR. DELINSKY: I'd just like to make
- 4 clear for the record the objection is on -- the
- 5 instruction was based on privilege.
- 6 BY MR. ELSNER:
- 7 Q. I'm going to show you Motley Rice 4.
- MR. DELINSKY: Before you show the
- 9 witness the exhibit, let's break. I think we've
- been going about an hour.
- MR. ELSNER: Okay. Happy to.
- THE VIDEOGRAPHER: We're going off the
- 13 record at 9:05 a.m.
- 14 (Whereupon, a recess was taken.)
- THE VIDEOGRAPHER: We're back on the
- 16 record at 9:18 a.m.
- 17 BY MR. ELSNER:
- Q. Mr. Moffatt, have you read any
- 19 newspaper articles, magazine articles about the
- 20 opioid crisis in the United States?
- A. I'm sure I have. I don't recall any
- 22 specifics.
- Q. What generally do you recall?
- MR. DELINSKY: Object to form.

- 1 A. Just general news stories.
- 2 BY MR. ELSNER:
- Q. What sources of news?
- 4 MR. DELINSKY: Object to form.
- 5 A. So like 60 Minutes, that sort of
- 6 thing.
- 7 BY MR. ELSNER:
- Q. Have you watched the 60 Minutes
- 9 episodes?
- 10 A. No, I have not.
- 11 Q. Have you read newspaper articles about
- the 60 minutes episodes?
- MR. DELINSKY: Object to form.
- 14 BY MR. ELSNER:
- Q. Dealing with the opioid crisis?
- MR. DELINSKY: Object to form.
- 17 A. Not that I recall, no.
- 18 BY MR. ELSNER:
- 19 Q. Do you get a newspaper at your house?
- A. No, I don't.
- Q. Do you get a newspaper at work?
- A. No, I don't.
- Q. Do you watch the news in the evening?
- 24 A. No, I don't.

- 1 Q. Have you read any books about the
- opioid crisis in the United States?
- 3 A. No.
- 4 Q. Not a single one?
- 5 MR. DELINSKY: Object to form.
- 6 A. Not that I recall, no. I don't read
- 7 many books. I'm, you know, at work most of the
- 8 time.
- 9 BY MR. ELSNER:
- 10 Q. Have you read any congressional
- 11 testimony about the opioid crisis in the States?
- MR. DELINSKY: Object to form.
- 13 Further object on privilege grounds to the
- 14 extent that --
- MR. ELSNER: It can't be privilege
- whether he read congressional testimony. It
- just can't be privileged if he read
- 18 congressional testimony.
- MR. DELINSKY: Mr. Elsner, you're not
- the arbiter of what privilege is or isn't, so if
- 21 I could finish my objection. It very well could
- 22 be.
- To the extent that you reviewed
- testimony in the context of attorney/client

- work, I instruct you to confer with me privately
- 2 about that before answering.
- MR. ELSNER: I think that's an
- 4 improper instruction.
- 5 BY MR. ELSNER:
- 6 O. Sir, have you read any congressional
- 7 testimony about the opioid crisis?
- 8 A. If I have, it would have been in the
- 9 context of attorney/client communications.
- Q. Well, you can answer yes or no, and
- then we can go to the next part.
- Have you read such testimony?
- 13 A. I don't recall reading such testimony,
- 14 but if I have, it would have been in the context
- of attorney/client communication.
- Q. Okay. So if I understand it, you've
- 17 read no books, don't recall any newspaper
- 18 articles, have watched no news programs at all
- about the opioid crisis in the United States?
- MR. DELINSKY: Object to form.
- 21 A. I've seen information, but it would
- largely be in connection with my role as a
- 23 corporate attorney.
- 24 BY MR. ELSNER:

- 1 Q. Have you attended any CLE programs
- 2 related to the DEA regulations?
- A. I have attended CLE programs. I don't
- 4 recall specific topics.
- 5 Q. Have you -- are they in the field of
- 6 DEA regulations?
- 7 MR. DELINSKY: Object to form. Asked
- 8 and answered.
- 9 A. I have attended many over the years.
- 10 We have a CLE requirement for Rhode Island, but
- 11 I don't recall specific topics and specific
- 12 years that I would have.
- 13 BY MR. ELSNER:
- 14 O. You don't -- do you select CLE
- programs in your field of practice?
- 16 A. Typically they're in my field of
- 17 practice, but there are also CLE presentations
- 18 at work, there are ones that are online, so it
- ¹⁹ varies.
- 20 O. Tell me about the ones that CVS shows
- 21 at work. What type of CLE programs does CVS
- 22 have internally?
- MR. DELINSKY: Object to form.
- A. They have a wide variety of programs.

- 1 Law firms come in and present on various topics.
- 2 BY MR. ELSNER:
- 3 Q. What law firms?
- 4 A. A wide variety of law firms.
- 5 Q. Give me some names.
- A. I don't -- I'm not involved in setting
- 7 them up. There are others in the department
- 8 that set up the programs and say, there's a CLE
- 9 on attorney/client privilege, or something like
- 10 that, and whatever firm they set it up with.
- 11 But, yeah, it varies.
- 0. Has there been a CLE on the
- distribution or dispensing of opioids?
- 14 A. I don't recall.
- Q. Has there been a CLE on the dispensing
- or distribution of controlled substances?
- 17 A. Are you talking about at CVS or --
- 18 Q. At CVS.
- 19 A. I don't recall.
- Q. Who at CVS would set those up?
- 21 A. One of the other attorneys has an
- 22 administrative assistant that -- or a paralegal
- that works with the firms to set up programs.
- Q. Who is the attorney that selects what

- 1 CLE programs will be shown at CVS?
- MR. DELINSKY: Object to form.
- A. It varies. Different attorneys would
- 4 set them up.
- 5 BY MR. ELSNER:
- Q. Well, give me a couple names.
- 7 MR. DELINSKY: Object to form.
- 8 A. Typically it's -- it would be one of
- 9 the senior vice presidents in the legal
- department, so Betsy Ferguson or Colleen
- 11 McIntosh would be two of the attorneys that
- 12 might have -- you know, firms would come to them
- and say, we have a program on attorney/client
- 14 privilege, do you want us to do it at CVS.
- 15 BY MR. ELSNER:
- 16 Q. Have you attended any DEA
- 17 presentations?
- MR. DELINSKY: Object to form.
- 19 A. Others at CVS have. I have not
- 20 personally.
- 21 BY MR. ELSNER:
- Q. Have you ever seen any slides or
- PowerPoint presentations prepared by the DEA?
- A. Other than in the context of

- 1 attorney/client information that I would have
- 2 received, no.
- Q. Well, let's break it down.
- 4 Have you ever seen such DEA
- 5 presentations? Just yes or no.
- 6 A. I don't recall seeing any DEA
- ⁷ presentations.
- Q. Have you ever spoke with Joseph
- 9 Rannazzisi?
- 10 A. Not that I know of, no.
- 11 O. Have you spoken with anyone at the DEA
- 12 about any of its investigations of CVS?
- MR. DELINSKY: Object to form.
- 14 A. I've spoken to people at the DEA. I
- don't believe I've ever spoken to them in the
- 16 context of an investigation.
- 17 BY MR. ELSNER:
- 18 O. In what context?
- 19 A. Related to registrations.
- Q. Registrations of what?
- 21 A. Either pharmacies or distribution
- centers, in the context of acquisitions where
- we're acquiring a large number of stores or
- distribution centers and how we go about making

- 1 the transition from the prior owner to CVS,
- that's typically where I would interact with
- 3 people at the DEA.
- Q. Who specifically, or what division of
- 5 the DEA would you interact with?
- 6 A. It would vary, but I believe they're
- 7 typically in the Office of Diversion Control.
- 8 Q. Do you know who?
- 9 A. It would have varied over the years.
- 10 I've been doing it for 21 years, so different
- people at different times. I don't recall
- 12 anybody's name.
- Q. What about in the 2010 through 2012
- 14 period?
- MR. DELINSKY: Objection. Asked and
- 16 answered.
- A. Well, we did acquisitions in that time
- period, so I probably would have talked to them
- 19 sometime in that time period.
- 20 BY MR. ELSNER:
- Q. Do you know any names?
- A. I don't recall. It's a long time ago.
- Q. I'm going to mark this next letter as
- 24 Exhibit 3.

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1 (Whereupon, CVS-Moffatt-3 was marked
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- for identification.)
- 3 BY MR. ELSNER:
- 4 O. This is a letter from counsel to
- 5 plaintiffs in this litigation, and it's a list
- of CVS custodians, and it says in the second
- 7 sentence that this "list identifies individuals
- 8 who we believe, based on our good-faith
- 9 investigation to date, are most likely to have
- 10 non-cumulative discoverable information relating
- to the claims against the CVS defendants in the
- 12 Track One cases."
- Do you see that?
- 14 A. Yes.
- Q. Okay. And if you turn to the second
- 16 page under the fifteenth person, your name
- 17 appears there.
- Do you see that?
- 19 A. Yes.
- Q. What is your understanding of the
- 21 discoverable information that you have to offer
- 22 in this litigation?
- MR. DELINSKY: Object to form.
- 24 And I'd state on the record that you

- 1 left out the first sentence of the letter which
- 2 indicates that the list includes individuals
- proposed by plaintiffs, and Mr. Moffatt's name
- 4 was proposed by the plaintiffs.
- 5 MR. ELSNER: Okay.
- 6 MR. DELINSKY: He was not identified
- 7 as a custodian by defense counsel who would have
- 8 relevant information.
- 9 MR. ELSNER: Okay.
- 10 BY MR. ELSNER:
- 0. Do you have relevant information
- 12 concerning the claims and defenses in this
- 13 action?
- MR. DELINSKY: Object to form.
- 15 And to the extent that calls on you to
- provide attorney/client legal analysis, I
- instruct you not to answer.
- 18 A. I wouldn't be the one making that
- 19 decision.
- 20 BY MR. ELSNER:
- Q. Would you agree that CVS is among the
- largest of the chain pharmacies in the United
- 23 States?
- MR. DELINSKY: Object to form.

- 1 A. Yes, we are.
- 2 BY MR. ELSNER:
- Q. And you're the largest by store number
- 4 with more than 9,800 CVS pharmacies?
- MR. DELINSKY: Object to form.
- A. We're close to Walgreen's, so I'm not
- 7 exactly sure what Walgreen's store count is
- 8 these days. We are among the largest.
- 9 BY MR. ELSNER:
- Q. Among the top two?
- MR. DELINSKY: Object to form.
- 12 A. As far as I know, yes.
- 13 BY MR. ELSNER:
- Q. Do you know how many pharmacies CVS
- 15 currently operates today in the United States?
- MR. DELINSKY: Object to form.
- A. Approximately 9,900.
- 18 BY MR. ELSNER:
- Q. And you're also the largest by the
- 20 number of pharmacists, right? There are over
- 21 20,000 pharmacists for CVS?
- MR. DELINSKY: Object to form.
- A. I'm not familiar with the count of
- pharmacists at, say, Walgreen's.

- 1 MR. ELSNER: I'll mark this next
- 2 document as Exhibit 4.
- 3 (Whereupon, CVS-Moffatt-4 was marked
- 4 for identification.)
- 5 BY MR. ELSNER:
- Q. This is Motley Rice 206. This is from
- 7 CVS's website.
- 8 Would you agree with me that CVS is
- one of the largest pharmacists by prescriptions,
- 10 handling over 2.5 billion prescriptions, is that
- 11 right?
- MR. DELINSKY: Object to form.
- A. So it says here "2.5 billion
- 14 prescriptions managed or filled." That doesn't
- mean we filled them necessarily. But I know
- that we are one of the bigger pharmacies and,
- therefore, fill more prescriptions than most
- 18 other pharmacies.
- 19 BY MR. ELSNER:
- Q. And would you agree that CVS is one of
- the largest pharmacies by revenue?
- MR. DELINSKY: Object to form.
- A. To my knowledge, yes.
- 24 BY MR. ELSNER:

- Q. And would it be accurate to say that
- that revenue is close to \$60 billion in 2017?
- MR. DELINSKY: Object to form.
- A. I don't have the figures at hand, but
- 5 -- so I don't really know off the top of my
- 6 head. There are many people that work on the
- 7 financials for the company.
- 8 BY MR. ELSNER:
- 9 Q. Does that sound about right?
- 10 A. I really couldn't say.
- 11 (Whereupon, CVS-Moffatt-5 was marked
- for identification.)
- 13 BY MR. ELSNER:
- O. Are we on Exhibit 5?
- 15 A. Yes.
- 16 Q. This is a map of the 9,800 pharmacies
- 17 that CVS has in the United States. Does it
- 18 appear accurate in terms of the majority of your
- 19 pharmacies on the East Coast, the midwest, and
- 20 in California?
- MR. DELINSKY: Object to form.
- A. So I'm not familiar with Red Lion,
- where this came from, but it appears generally
- 24 accurate. I mean, I don't know that you'd call

- 1 Texas midwest, there's a number of stores in
- 2 Texas, Arizona, so this looks generally like the
- 3 store map picture.
- 4 BY MR. ELSNER:
- 5 Q. And by midwest, I was referring to
- 6 sort of the Ohio area. And CVS has about 329
- 7 pharmacies in Ohio, is that right?
- MR. DELINSKY: Object to form.
- 9 A. I don't recall the specifics of state
- 10 by state store count, but that sounds generally
- 11 accurate.
- 12 BY MR. ELSNER:
- 13 Q. If you look back at Exhibit 4 on the
- third page, it has a drop-down on the website,
- 15 facts by state, and for Ohio the drop-down says
- 16 329 pharmacies. Does that sound about accurate?
- MR. DELINSKY: Object to form.
- 18 A. I don't know when this was prepared,
- so, you know, it could have changed a little
- 20 bit. But, you know, at the time that the
- information was loaded it was accurate, but, you
- know, we opened new stores, we closed stores.
- 23 BY MR. ELSNER:
- 24 Q. Sure.

- 1 A. Pretty consistently.
- Q. It's generally accurate?
- 3 A. Yes.
- Q. And what is CVS's market share in the
- 5 country?
- 6 MR. DELINSKY: Object to form.
- 7 Mr. Moffatt, to the extent that that
- 8 calls for information you've obtained in
- 9 attorney/client context, I instruct you not to
- answer.
- 11 A. Well, it would depend on what product
- 12 you're talking about and so forth. There are
- other people at CVS that would be more attuned
- 14 to what market share we have.
- 15 BY MR. ELSNER:
- 16 Q. I'm just describing the number of
- 17 pharmacies across the country. Would you say
- that you have about 14 percent of the total
- 19 market share?
- MR. DELINSKY: Object to form. Same
- objection and instruction as to privilege.
- 22 A. I don't know what the market share is.
- 23 And again, it depends on what you're looking at,
- whose statistics you're looking at. Others at

- 1 CVS, you know, have responsibility -- well, they
- 2 would know more about market share than a
- 3 corporate attorney.
- 4 BY MR. ELSNER:
- 5 Q. What about in Ohio, do you know what
- 6 the market share is that CVS has in Ohio?
- 7 A. Others at CVS would know that
- 8 information. I don't.
- 9 Q. There are roughly 70 CVS stores in
- 10 Summit County and Cuyahoga County. Does that
- 11 sound accurate to you?
- 12 A. I have no basis for knowing how many
- 13 stores are in specific counties.
- 0. Are you aware that the Summit and
- 15 Cuyahoga Counties are -- sorry, strike that.
- Are you aware that CVS stores in
- 17 Summit and Cuyahoga County were provided
- 18 controlled substances from the Indiana
- 19 distribution center?
- MR. DELINSKY: Object to form.
- 21 A. Others at CVS would be responsible for
- which distribution centers distribute to which
- 23 stores. I'm not responsible for that, and I
- don't have any information of my own.

- 1 BY MR. ELSNER:
- Q. So as the president of CVS Indiana,
- you don't know what states that distribution
- 4 center distributes controlled substances to, is
- 5 that right?
- 6 MR. DELINSKY: Object to form.
- 7 A. Others at CVS would be responsible for
- 8 that information. It's -- in connection with my
- 9 licensing responsibility, I know that it has
- 10 licenses in a number of states.
- 11 BY MR. ELSNER:
- 12 Q. Have you read the complaint in this
- 13 case?
- MR. DELINSKY: Object to form.
- 15 A. In connection with preparing for this,
- 16 I probably was given it at some point. I don't
- 17 recall seeing it.
- 18 BY MR. ELSNER:
- 19 Q. Well, did you read it?
- MR. DELINSKY: Object to form. Asked
- and answered.
- 22 A. Again, in connection with preparing --
- either preparing for the case, or I think I
- might have provided a declaration or an

- 1 affidavit, so I may have read it back then, but
- 2 I don't recall specifics about the complaint.
- 3 BY MR. ELSNER:
- 4 Q. But you did provide a declaration. In
- 5 preparing the declaration, did you read the
- 6 complaint?
- 7 MR. DELINSKY: Object to form. Asked
- 8 and answered.
- 9 A. I believe it would have been given to
- 10 me by counsel. I don't recall. I signed a
- 11 number of declarations, but typically I would be
- 12 given the documents that I need in order to
- 13 provide the declaration.
- 14 BY MR. ELSNER:
- Q. Did you write the declaration?
- MR. DELINSKY: Object to form.
- To the extent that calls for the
- 18 disclosure of attorney/client communications, I
- instruct you not to answer.
- 20 A. It would have been purely
- 21 attorney/client communications.
- 22 BY MR. ELSNER:
- Q. What did you read to prepare your
- declaration? Did you read the declaration?

- 1 A. Of course, I read the declaration.
- Q. What else did you read?
- A. I don't recall specifics. I'd have to
- 4 see the declaration and then, you know, it
- 5 would -- I'm not sure that I recall exactly what
- 6 I read.
- 7 Q. Do you understand that the allegations
- 8 in this case is that there is an opioid crisis
- 9 in Summit and Cuyahoga Counties?
- MR. DELINSKY: Object to form.
- 11 A. I don't have any basis for that
- 12 understanding.
- 13 BY MR. ELSNER:
- Q. To prepare for the deposition, did you
- 15 read any -- to prepare for the deposition, did
- 16 you read any other depositions that have been
- taken in this case?
- 18 A. I did not.
- 19 Q. Did you read that, not just CVS
- depositions, any other depositions from Purdue,
- 21 Cardinal, any other depositions?
- 22 A. I don't recall reading any other
- depositions in this case.
- Q. Have you been provided any?

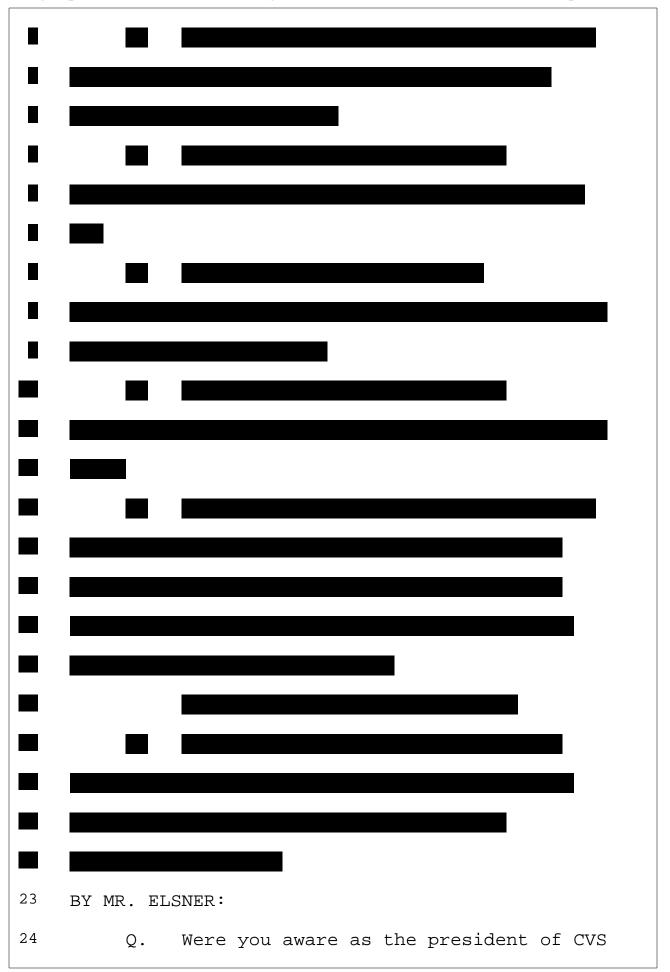
- 1 A. I don't believe so, no.
- Q. What did you do to prepare for your
- 3 deposition?
- 4 A. Principally I met with our attorneys
- 5 and --
- 6 Q. For how long?
- 7 A. -- both in-house counsel and out.
- Q. For how long did you meet, and over
- 9 how many days?
- 10 A. I don't really recall. We met a
- 11 couple of different times because my deposition
- 12 was originally scheduled earlier, so -- and I
- don't recall, I didn't keep track of how long
- 14 meetings were or anything like that.
- Q. Did you review documents?
- 16 A. I reviewed a handful of documents,
- 17 yes.
- Q. What documents did you review?
- MR. DELINSKY: I instruct you not to
- answer that, and caution you to the extent you
- 21 even recall an attorney/client --
- 22 attorney/client privilege and attorney work
- 23 product grounds.
- Mr. Elsner, if you would like to ask

- 1 about particular documents, we'll take those
- questions as they come. But to the extent your
- question asks for a selection of documents
- 4 that's selected by counsel, I instruct the
- 5 witness not to answer.
- 6 MR. ELSNER: I don't think that's an
- 7 appropriate objection, but I think it's one we
- 8 need to resolve with the court.
- 9 BY MR. ELSNER:
- 10 Q. Did you discuss your deposition with
- 11 anyone other than counsel?
- 12 A. No.
- Q. Did you discuss your deposition with
- 14 any other employees at CVS other than attorneys?
- 15 A. Other than attorneys, no. I let my
- 16 boss know that I was going to be here today.
- Q. What role, if any, did you play with
- 18 respect to the suspicious order monitoring
- 19 system at CVS?
- MR. DELINSKY: Object to form.
- 21 A. Others at CVS were responsible for the
- 22 systems. I didn't have any role in that. I'm
- ²³ an attorney.
- 24 BY MR. ELSNER:

- 1 Q. At one point in time CVS had hired the
- 2 Buzzeo Group to help it develop an algorithm for
- 3 suspicious order monitoring system. Are you
- 4 familiar with the Buzzeo Group?
- 5 A. I am familiar with Ron Buzzeo. Many,
- 6 many years ago I communicated with him, but it's
- been quite a long time since I did any of that.
- Q. What was the base -- what were you
- 9 communicating with him about?
- MR. DELINSKY: And I object to the
- 11 extent that question calls for privileged
- information. To the extent it does, I instruct
- the witness not to answer. If you're not sure
- 14 and you want to discuss it, we can discuss it.
- 15 A. I don't recall specifically what I
- 16 might have talked to him about, but it would
- 17 have been because I'm an attorney and he was a
- 18 consultant.
- 19 BY MR. ELSNER:
- Q. Did you negotiate the contract between
- 21 CVS and the Buzzeo Group?
- MR. DELINSKY: Object to form.
- A. I don't recall any -- I don't even
- 24 know if there was a contract. I don't recall if

I was involved in the negotiation of it. 1 2 BY MR. ELSNER: Q. Did it relate to the development of a suspicious order monitoring system at CVS, your 4 conversations with Ron Buzzeo? 5 MR. DELINSKY: Object to form. 6 7 I don't recall what I would have 8 talked to Mr. Buzzeo about.

- 1 BY MR. ELSNER:
- Q. You said you knew Ron Buzzeo, I may
- misquote you, it's not my intention, but from
- 4 way back. What period of time did you first
- 5 meet Ron Buzzeo?
- 6 MR. DELINSKY: Object to form.
- 7 A. It would have been sometime shortly
- 8 after I got to CVS, so late 1990s, early 2000s.
- 9 BY MR. ELSNER:
- Q. And was your meeting with him in
- 11 relationship to him serving as a consultant to
- 12 CVS?
- MR. DELINSKY: Object to form.
- 14 A. As I recall, yes. And I don't know
- that I ever met him, I think I talked to him on
- 16 the phone.
- 17 BY MR. ELSNER:
- 18 Q. Okay. And what's your best
- 19 recollection of that discussion? And how many
- times did you talk to him on the phone?
- MR. DELINSKY: Object to form.
- 22 A. It was 20 years ago. I really don't
- 23 know.
- 24 BY MR. ELSNER:



- in Indiana that CVS Indiana was reviewing all
- orders for controlled substances to determine
- whether there was a suspicion of diversion?
- 4 MR. DELINSKY: Object to form.
- 5 A. Others at CVS were responsible for
- 6 operations, and I was not involved in that.
- 7 BY MR. ELSNER:
- 8 Q. So as the president of CVS Indiana, no
- 9 operational issues were brought to your
- 10 attention, is that right?
- MR. DELINSKY: Object to the form of
- 12 the question.
- 13 A. Others at CVS were responsible for
- operations. I was not involved in operations.
- 15 I'm not an operator.
- 16 BY MR. ELSNER:
- Q. Did you have any conversations with
- 18 Mark Nicastro who was an employee of CVS
- 19 Indiana?
- A. Not that I recall, no.
- Q. Do you recall any conversations with
- 22 any employees of CVS Indiana distribution center
- while you served as president of CVS Indiana?
- MR. DELINSKY: Object to form.

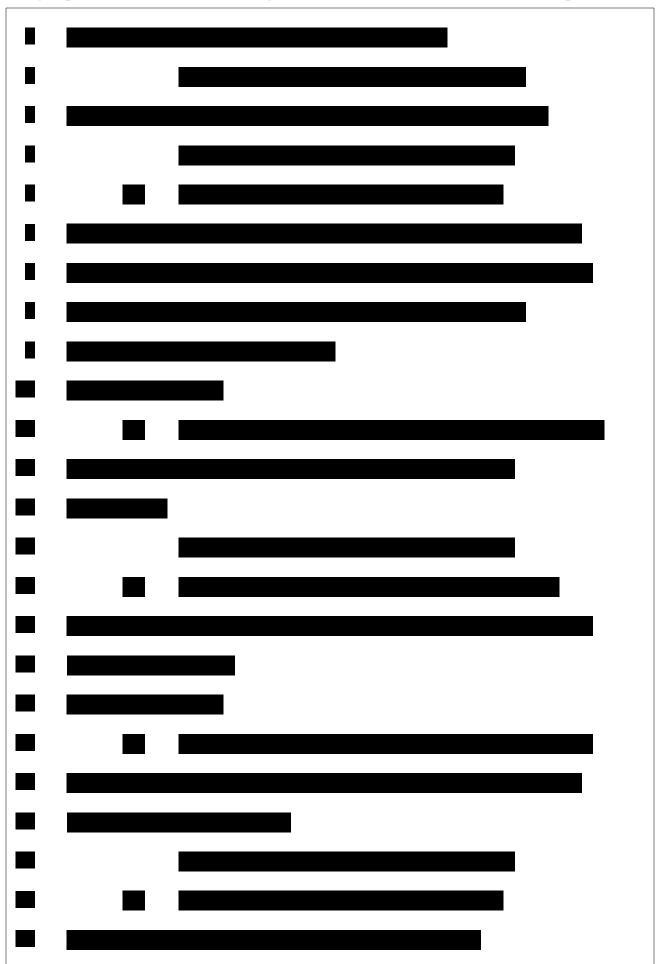
- 1 A. Any communications I would have had
- would have been in my role as an attorney. I
- 3 don't recall specifics.
- 4 BY MR. ELSNER:
- 5 O. Let's break it down.
- Do you recall any conversations? And
- 7 we can deal with the privilege issue separately.
- 8 A. I believe I have talked to people at
- 9 the distribution center in my role as an
- 10 attorney.
- 11 Q. What people -- without disclosing the
- conversation, what people at the CVS Indiana
- distribution center did you communicate with?
- 14 A. I don't recall. It was many years ago
- that we're talking about. We're talking about,
- 16 you know, pre-2014, so I don't really know.
- Q. Did you ever speak with Gary Millikan?
- 18 A. I don't recall. I know the name, and
- 19 I probably have talked to Gary in the past,
- either on conference calls or directly, I can't
- 21 recall. But it would have been, again, in my
- 22 role as an attorney.
- Q. Aaron Burtner, did you ever have any
- 24 conversations with Aaron Burtner?

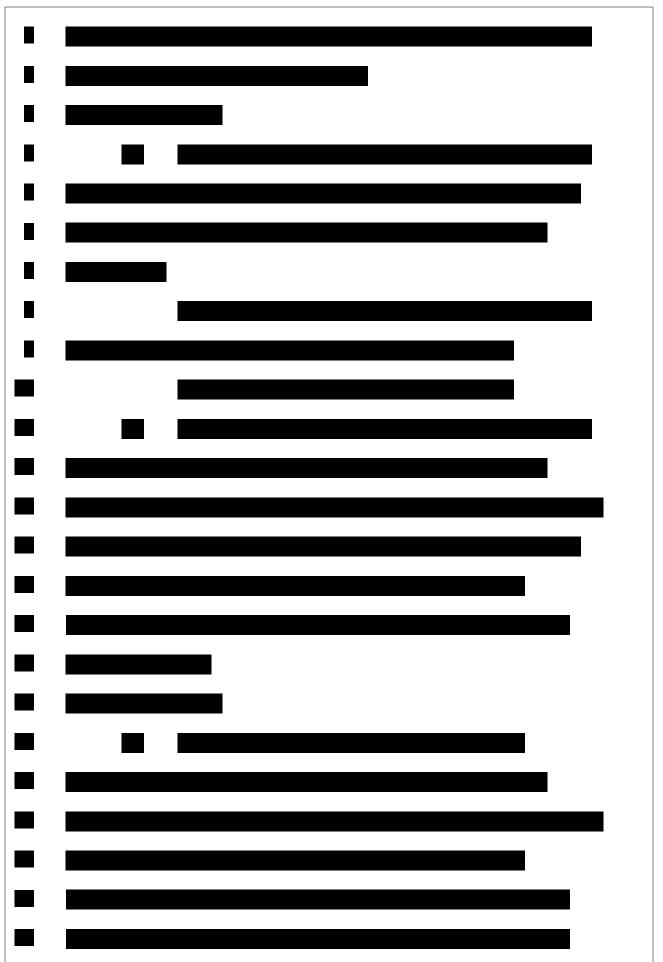
- 1 A. I'm not familiar with that name.
- MR. ELSNER: Mark this as Exhibit 6.
- 3 (Whereupon, CVS-Moffatt-6 was marked
- for identification.)
- 5 BY MR. ELSNER:
- Q. Mr. Moffatt, this is the DEA's Drug
- 7 Fact Sheet for hydrocodone. Hydrocodone was one
- 8 of the drugs that the Indiana distribution
- 9 center distributed to CVS stores in Summit and
- 10 Cuyahoga County.
- 11 Are you familiar with the fact that
- 12 CVS distributed hydrocodone?
- MR. DELINSKY: Object to form.
- 14 A. Others were responsible for what
- distribution centers distributed what drugs, and
- 16 I'm not familiar with it.
- 17 BY MR. ELSNER:
- 18 Q. Okay. This says, if you read it in
- 19 the Overview with me here, that "Hydrocodone is
- the most frequently prescribed opioid in the
- United States and is associated with more drug
- 22 abuse and diversion than any other...illicit
- opioid."
- Were you aware of that?

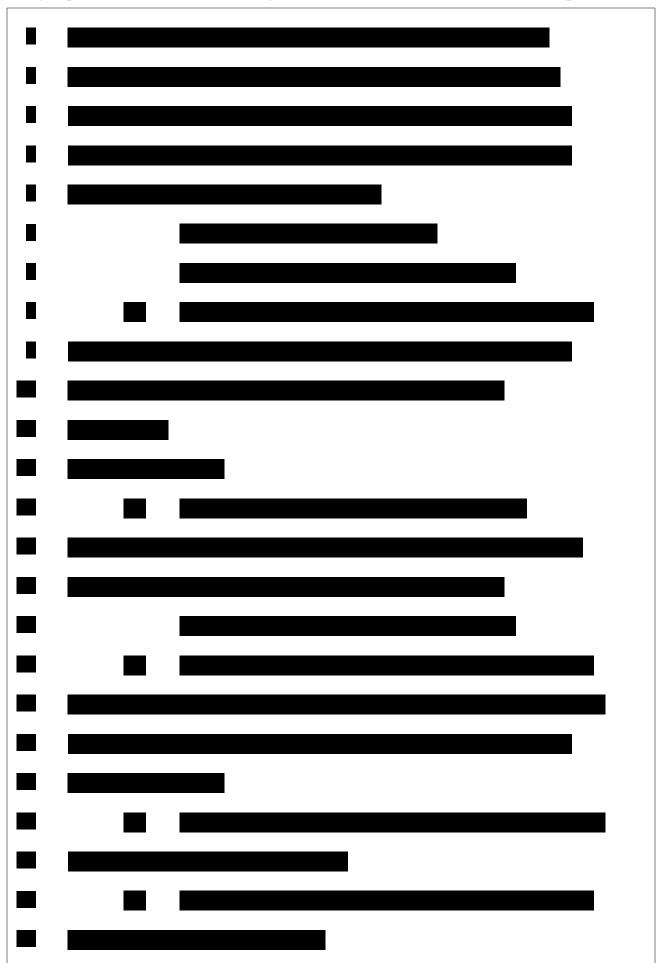
- MR. DELINSKY: Object to form.
- A. Well, it says "licit or illicit."
- 3 BY MR. ELSNER:
- Q. Licit or illicit, that's right.
- 5 A. I'm not familiar with this document at
- 6 all, so I was not familiar until reading it just
- 7 now.
- Q. Are you aware that hydrocodone is the
- 9 most frequently prescribed opioid in the United
- 10 States?
- 11 A. That's what it says here. I'm not
- 12 familiar with what drugs are prescribed. Others
- 13 at CVS would be more knowledgeable about that.
- Q. Did you know in certain years the
- dispensing of hydrocodone was more than double
- 16 that of Lipitor in the United States?
- MR. DELINSKY: Object to form.
- 18 A. Others at CVS are knowledgeable about
- 19 the prescribing of drugs. That's not in my
- 20 area.
- 21 BY MR. ELSNER:
- Q. As the president of CVS Indiana, do
- you know whether hydrocodone was the highest
- 24 drug distributed from CVS Indiana?

- MR. DELINSKY: Object to form.
- 2 A. Others at CVS would know about what
- 3 drugs were distributed from what distribution
- 4 centers. It's not in my area.
- 5 BY MR. ELSNER:
- 6 Q. Were you aware that hydrocodone was
- 7 the subject of more drug abuse and diversion
- 8 than any other licit or illicit opioid?
- 9 MR. DELINSKY: Object to form.
- 10 A. Others at CVS were responsible for
- 11 that sort of thing. It's not in my area.
- 12 BY MR. ELSNER:
- Q. Did it concern you as the president of
- 14 CVS Indiana that you were distributing
- 15 hydrocodone and that it was the subject of such
- 16 abuse?
- MR. DELINSKY: Object to form.
- 18 A. Others at CVS were responsible for
- this, and I don't have any basis for what you're
- 20 saying in your question.
- 21 BY MR. ELSNER:
- 22 Q. So it didn't concern you one way or
- 23 the other?
- MR. DELINSKY: Object to form.

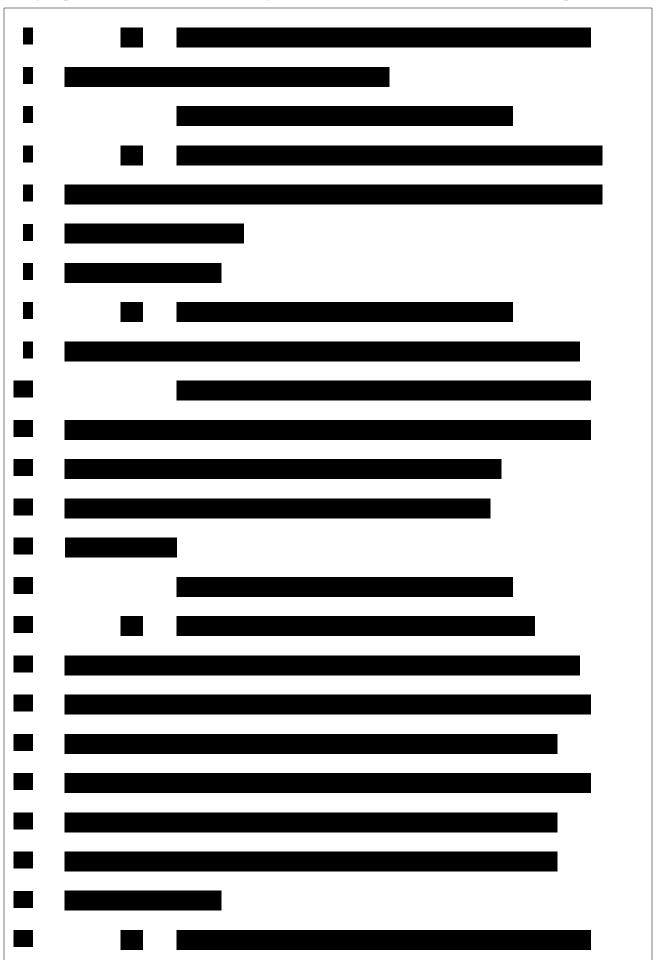
Others at CVS would be responsible for 1 Α. 2 those areas. BY MR. ELSNER: 4 Q. And it didn't concern you? 5 MR. DELINSKY: Object to form. 6 A. Others at CVS were responsible for 7 that. 8 BY MR. ELSNER: Q. Well, they may have been, but did it 9 10 concern you? MR. DELINSKY: Object to form. 11 12 Others at CVS were responsible, so I Α. was not involved in that, and so it was not --13 14 it would not have been one of my concerns. 15 MR. ELSNER: I'm going to mark this 16 next document as Exhibit 7. 17 (Whereupon, CVS-Moffatt-7 was marked 18 for identification.) 19 BY MR. ELSNER:





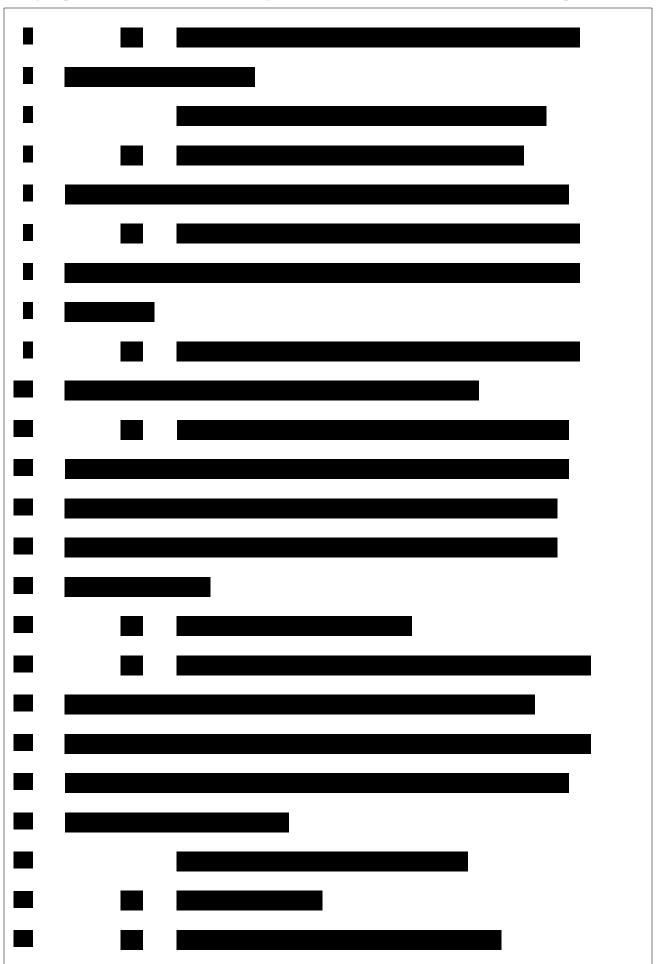


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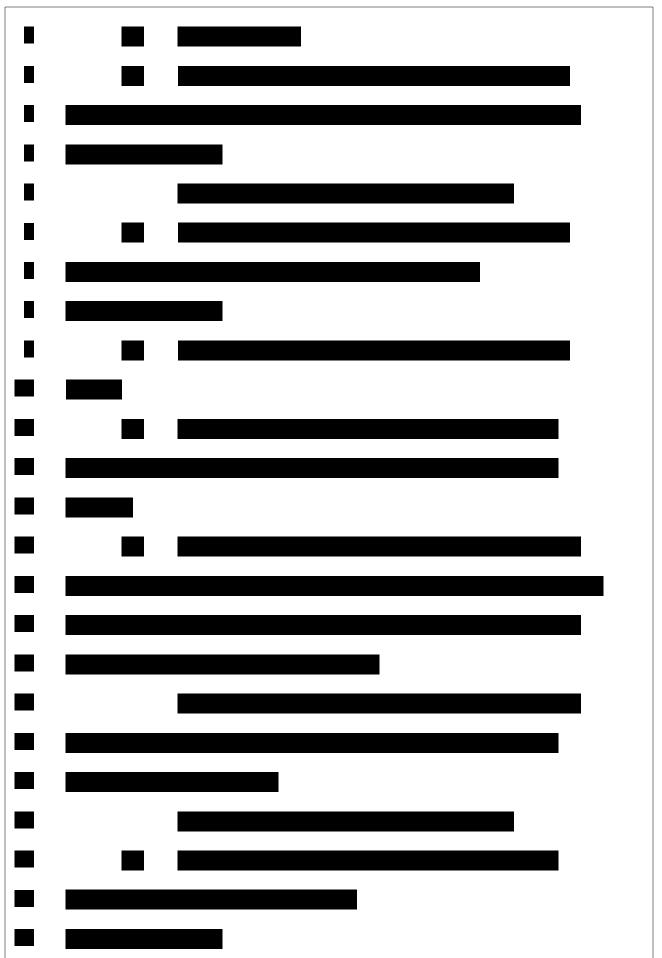


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12
              MR. ELSNER: Why don't we take a quick
13
    break. Go off the record for a minute.
14
              THE VIDEOGRAPHER: We're going off the
15
    record at 9:58 a.m.
16
               (Whereupon, a recess was taken.)
17
              THE VIDEOGRAPHER: We're back on the
    record at 10:10 a.m.
18
19
    BY MR. ELSNER:
20
         Q. Mr. Moffatt, I'm going to show you
21
    Exhibit 8.
              (Whereupon, CVS-Moffatt-8 was marked
22
23
              for identification.)
24
    BY MR. ELSNER:
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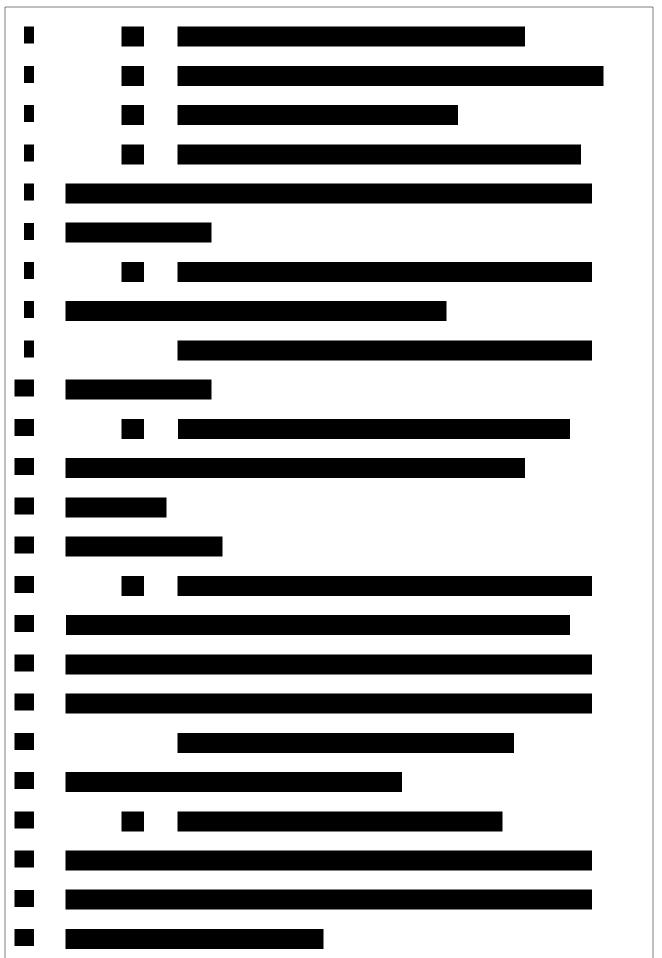
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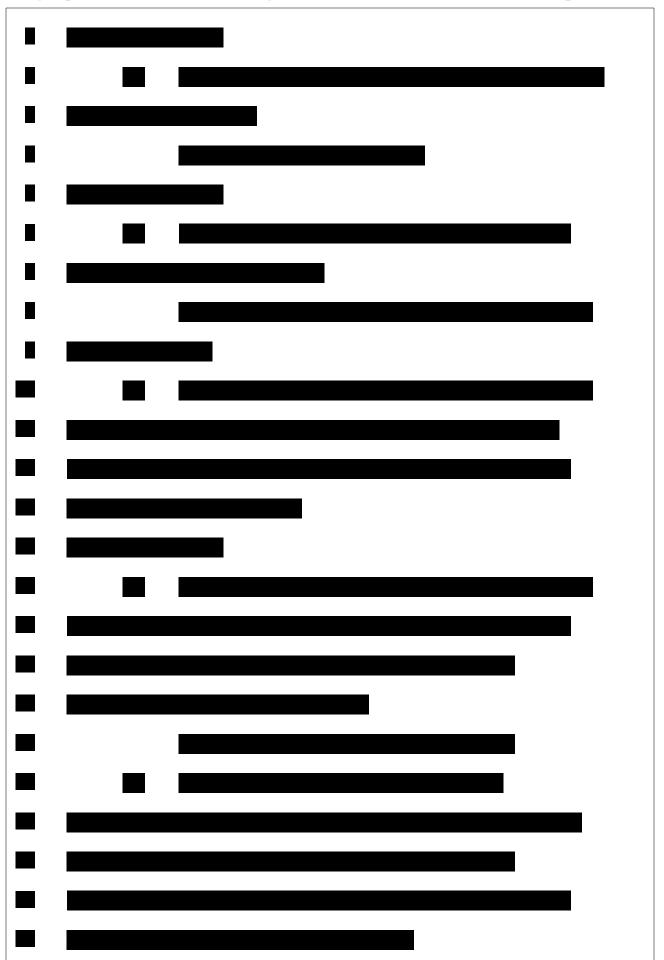
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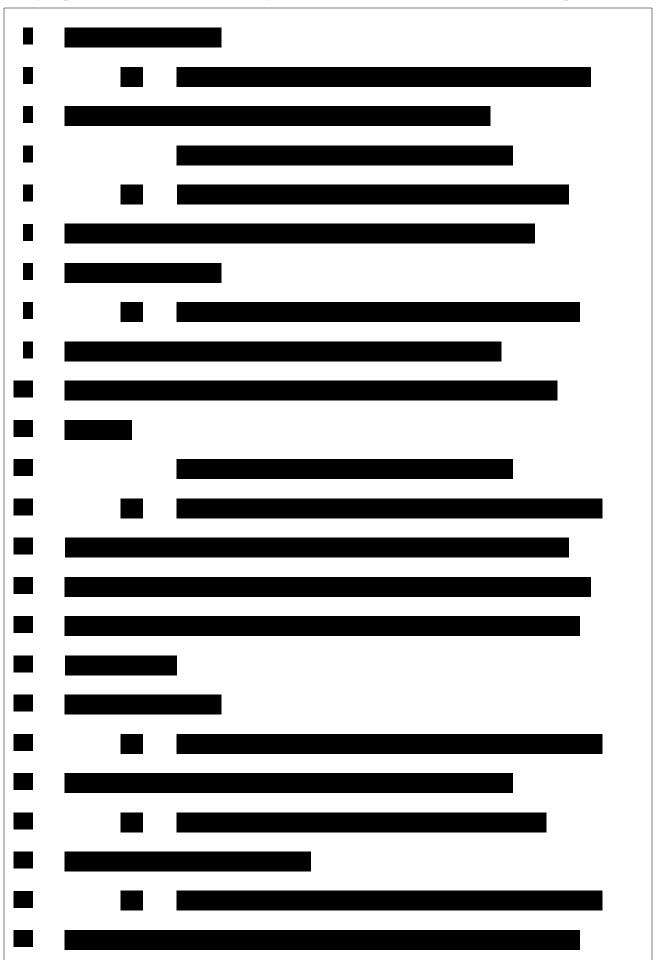
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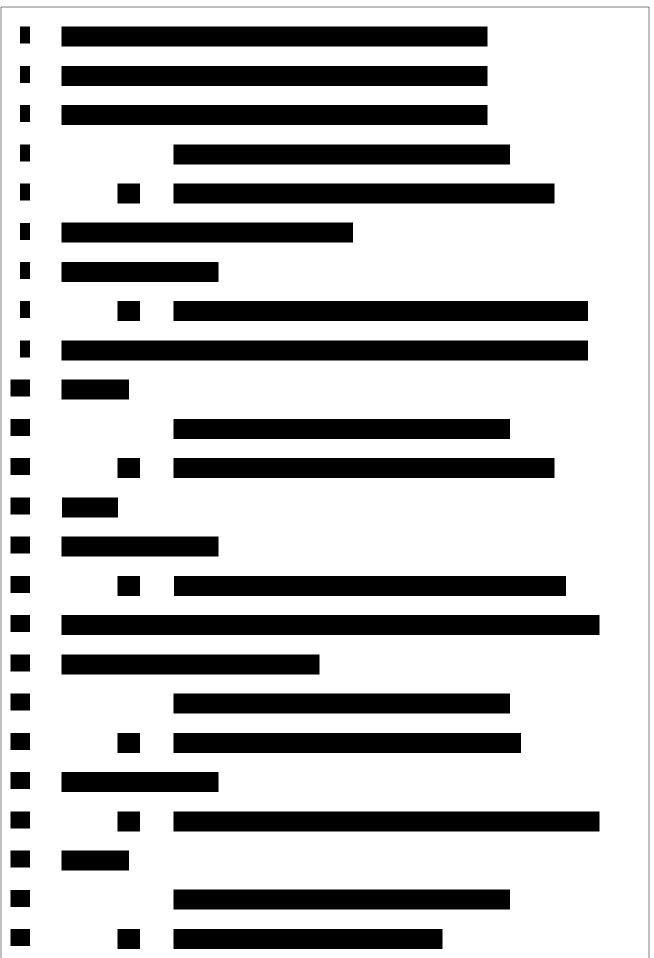
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7 BY MR. ELSNER: 8 What did you do as the president of Q. 9 CVS Indiana? 10 MR. DELINSKY: Object to form. Asked 11 and answered. My role was largely administrative. 12 Α. BY MR. ELSNER: 13 14 O. And to do what? 15 A. Sign documents. Q. What documents? 16 17 MR. DELINSKY: Objection. Asked and 18 answered. 19 I signed many, many documents for a number of our entities. I don't recall 20 21 specifics as to what I signed for a specific 22 entity. 23 BY MR. ELSNER:

Q. Well, you knew you were being deposed

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24

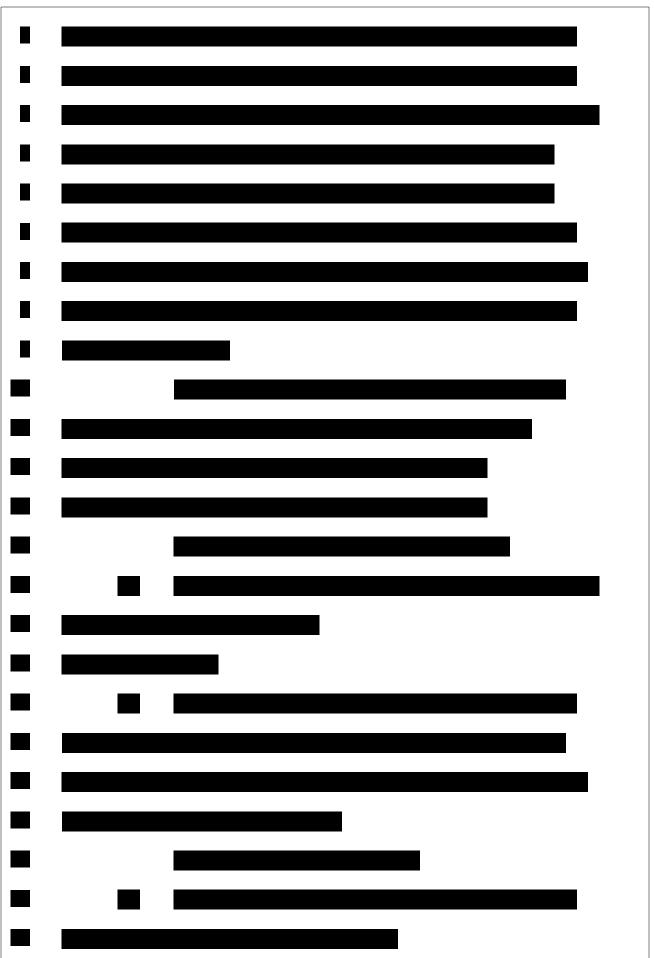
- 1 today, and you knew you were being deposed with
- your role with respect to being the president of
- 3 CVS Indiana which is a defendant in this action,
- 4 right?
- 5 A. Yes.
- Q. Did you take any steps to look through
- 7 the documents or the things you executed as the
- 8 president of CVS Indiana in the relevant time
- 9 period to prepare for today's deposition?
- MR. DELINSKY: Object to form.
- 11 A. I don't know what documents I signed
- on behalf of CVS Indiana.
- 13 BY MR. ELSNER:
- 0. And to come here today for your
- deposition you didn't make any effort to
- determine that, is that right?
- MR. DELINSKY: Object to form.
- 18 A. I wasn't involved in the collection of
- documents or anything like that, so I did not
- 20 myself go looking through files.
- 21 BY MR. ELSNER:
- Q. You, to prepare for today's
- deposition, you didn't go back and look at the
- documents you executed in the relevant time

- 1 period related to this lawsuit while you served
- 2 as the president of CVS Indiana, is that right?
- MR. DELINSKY: Object to form.
- 4 Further object to the insinuation that a fact
- 5 witness has a duty to review his old files in
- 6 preparation for a deposition. There's no such
- 7 duty.
- 8 MR. ELSNER: Objection. You can
- 9 object on form or privilege. You can't give
- 10 speaking objections, you know that.
- 11 A. So I signed thousands of documents
- during the time period we're talking about. I
- did not go back to try to find what specific
- documents I signed for any specific entity.
- 15 BY MR. ELSNER:
- Q. Did you understand that this testimony
- today and this lawsuit is important?
- MR. DELINSKY: Object to form.
- 19 A. I understand it's important. I don't
- 20 know the relevance of me going back to look at
- 21 files from many, many years ago to try to find
- documents that I don't even know if they exist.
- 23 BY MR. ELSNER:
- Q. One of your roles as president of CVS

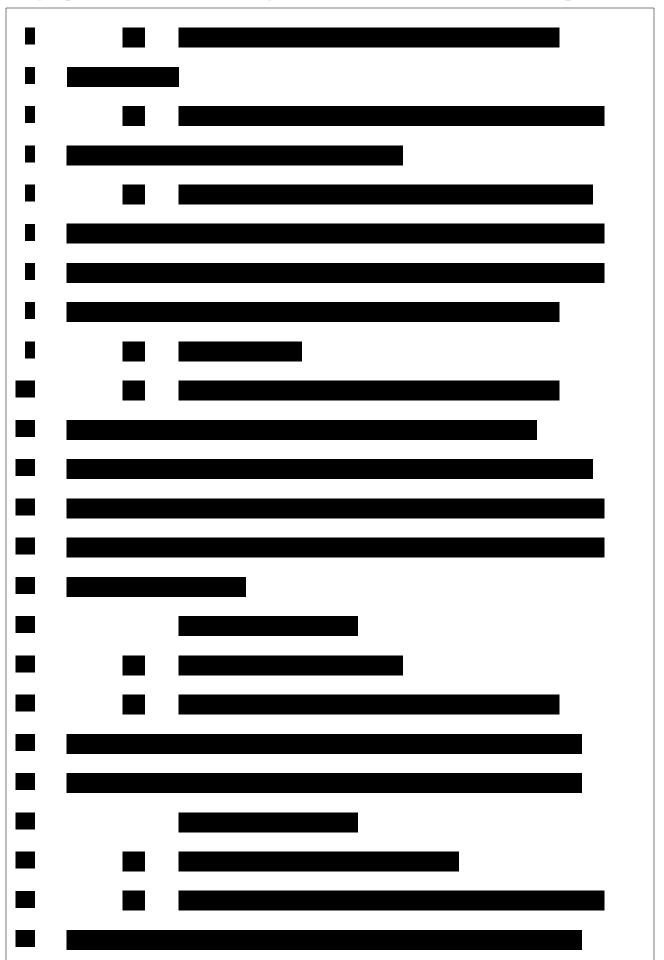
- 1 Indiana was to make sure that the distribution
- 2 center maintained its license with the DEA, its
- 3 registration to distribute controlled
- 4 substances, right?
- 5 MR. DELINSKY: Object to form.
- 6 A. Could you repeat that?
- 7 MR. ELSNER: Could you read it back?
- 8 (Whereupon, the reporter read back the
- 9 pending question.)
- MR. DELINSKY: Object to form.
- 11 A. So a number of people were responsible
- 12 for maintaining the licenses of the facility. I
- don't think it was my role. It was certainly
- 14 not my role individually.
- 15 BY MR. ELSNER:
- Q. Well, you were the president. There's
- 17 no one higher than you at CVS Indiana, right?
- MR. DELINSKY: Object to form.
- 19 Misstates testimony.
- A. My role as president was
- 21 administrative. There were other people that
- were operating the facility.
- 23 BY MR. ELSNER:
- Q. Did you think it was important for CVS

- 1 Indiana to maintain its license as the president
- of that entity?
- MR. DELINSKY: Object to form.
- 4 A. Others are responsible for operations.
- 5 It's important for each of our facilities to be
- 6 properly licensed.
- 7 BY MR. ELSNER:
- Q. Did you think it was important that
- 9 each facility is properly licensed, including
- 10 CVS Indiana as its president?
- MR. DELINSKY: Object to form.
- 12 A. So other people are involved in the
- operations of all the facilities. They have
- 14 responsibility, and I believe that it's
- important that we maintain proper licenses.
- 16 BY MR. ELSNER:
- Q. What steps did you take, if any, to
- 18 ensure that CVS Indiana was taking the
- 19 appropriate steps to maintain its license?
- MR. DELINSKY: Object to form.
- 21 A. I don't recall anything specific with
- 22 regard to CVS Indiana.
- 23 BY MR. ELSNER:

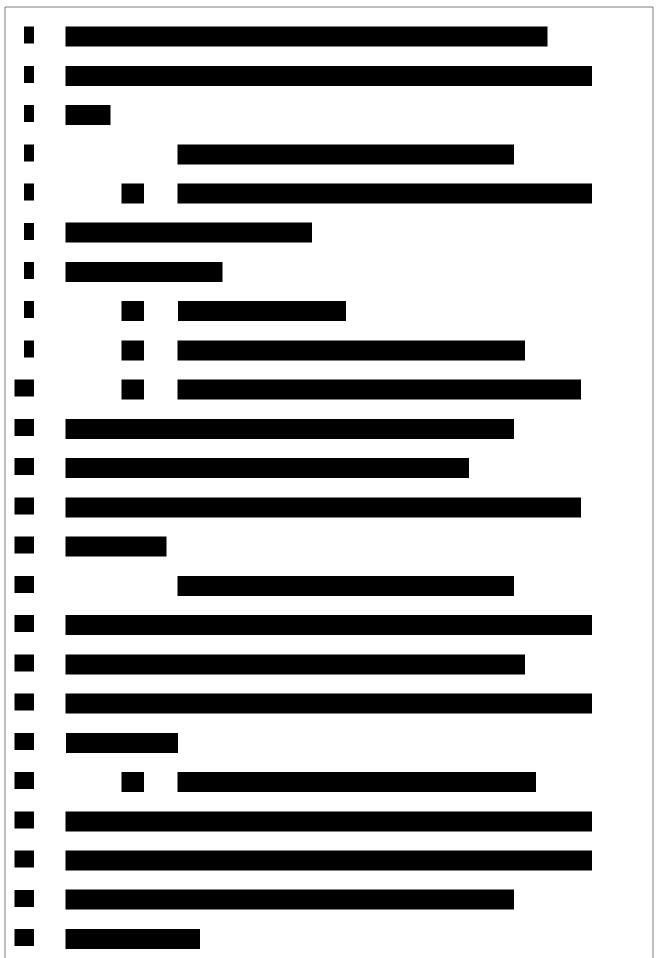
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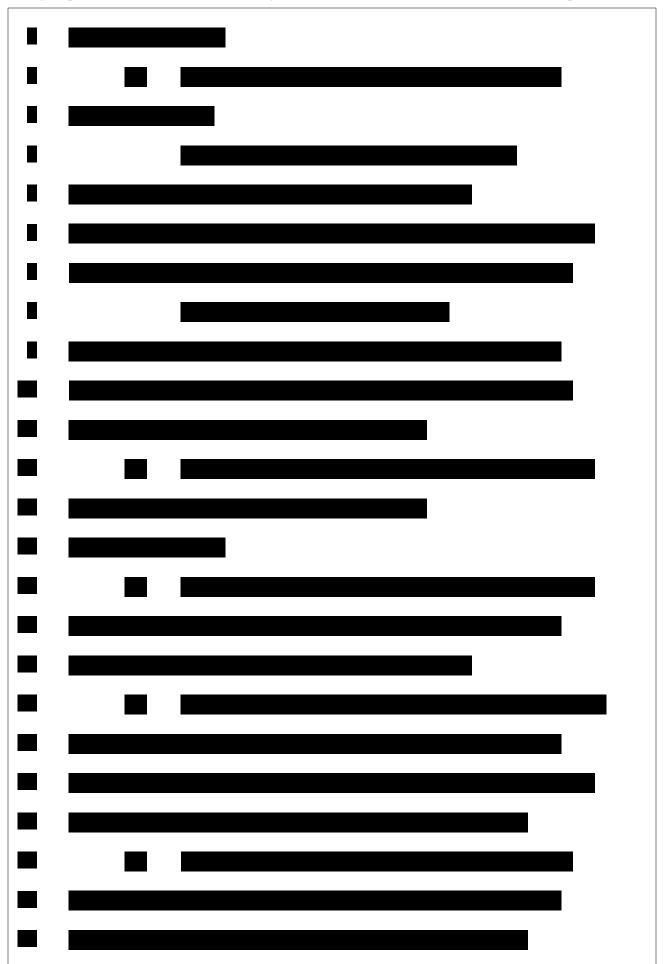
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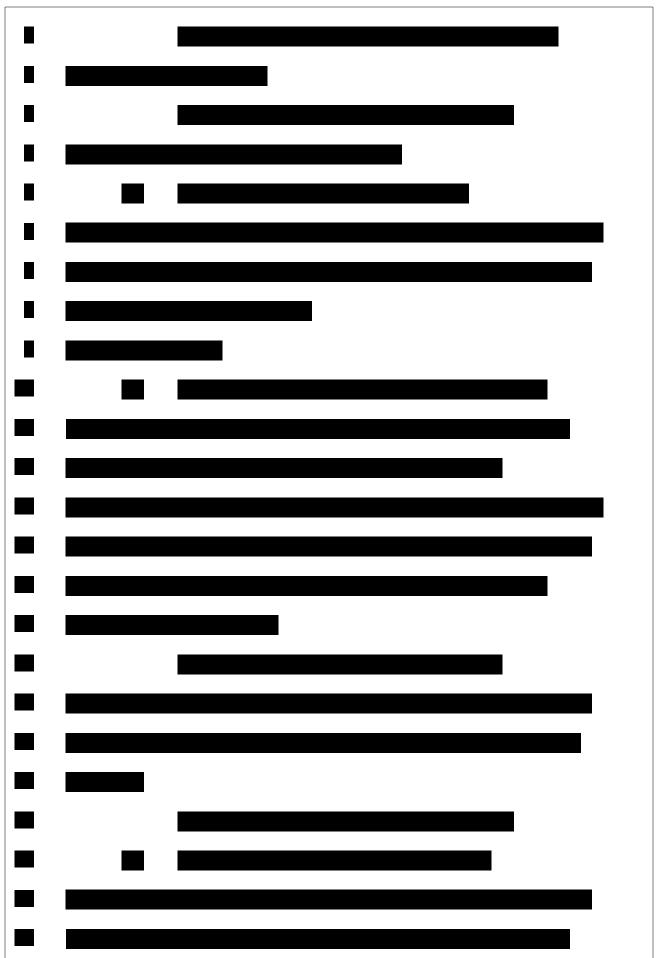
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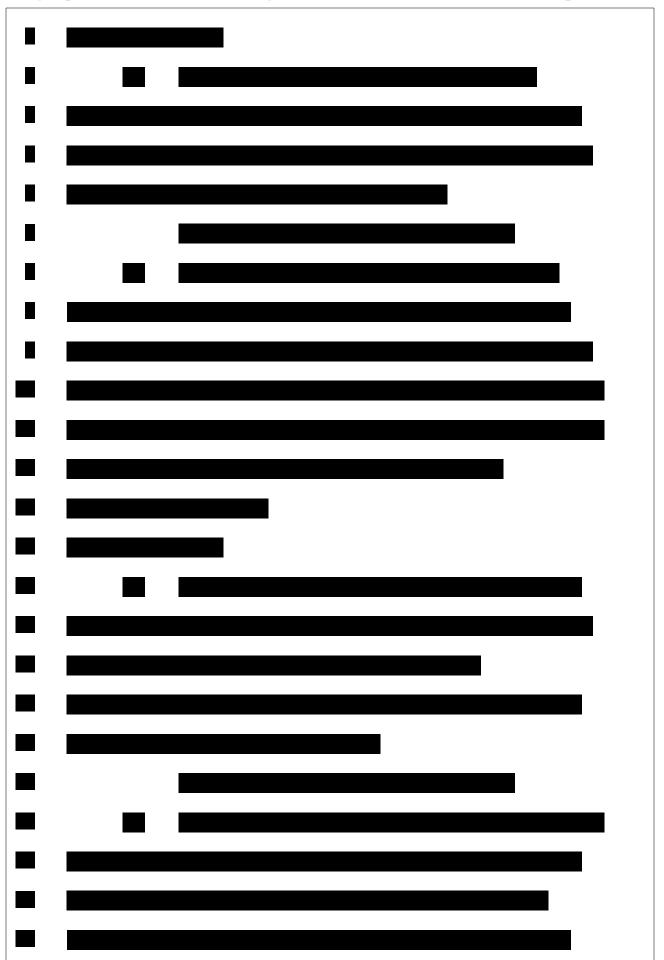
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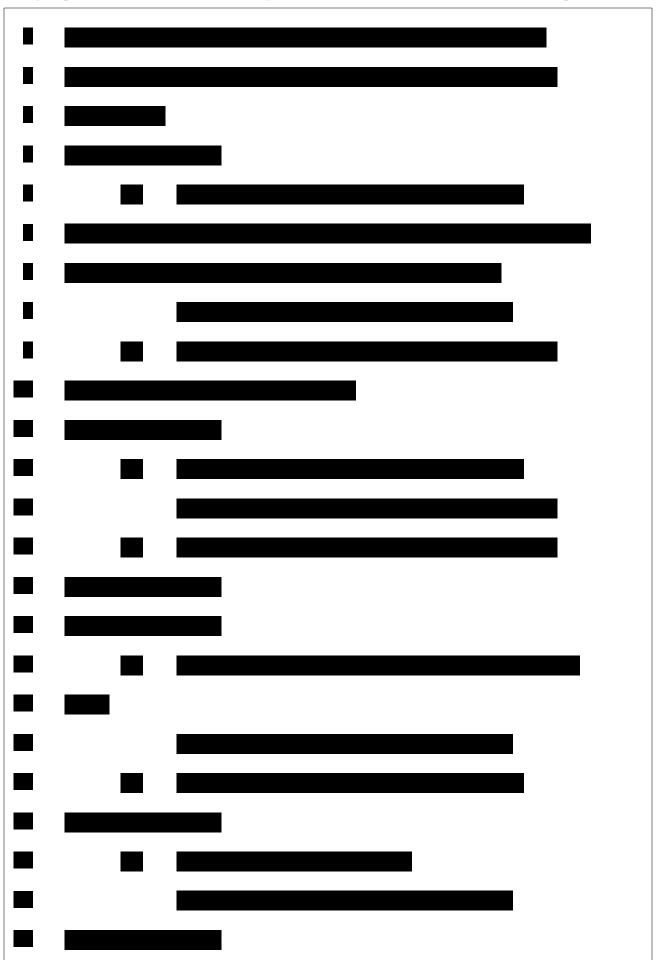
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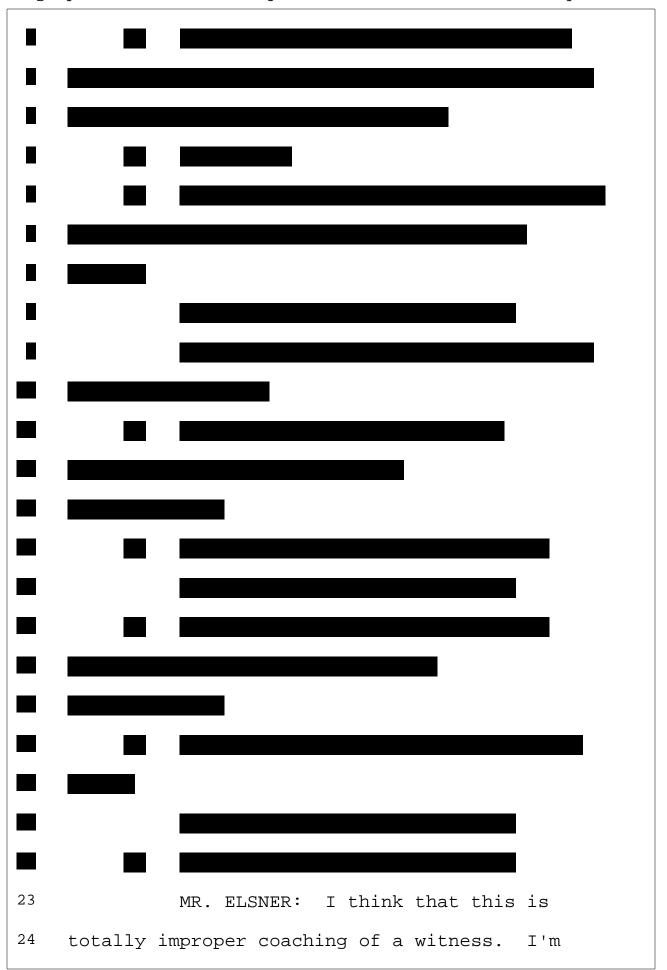


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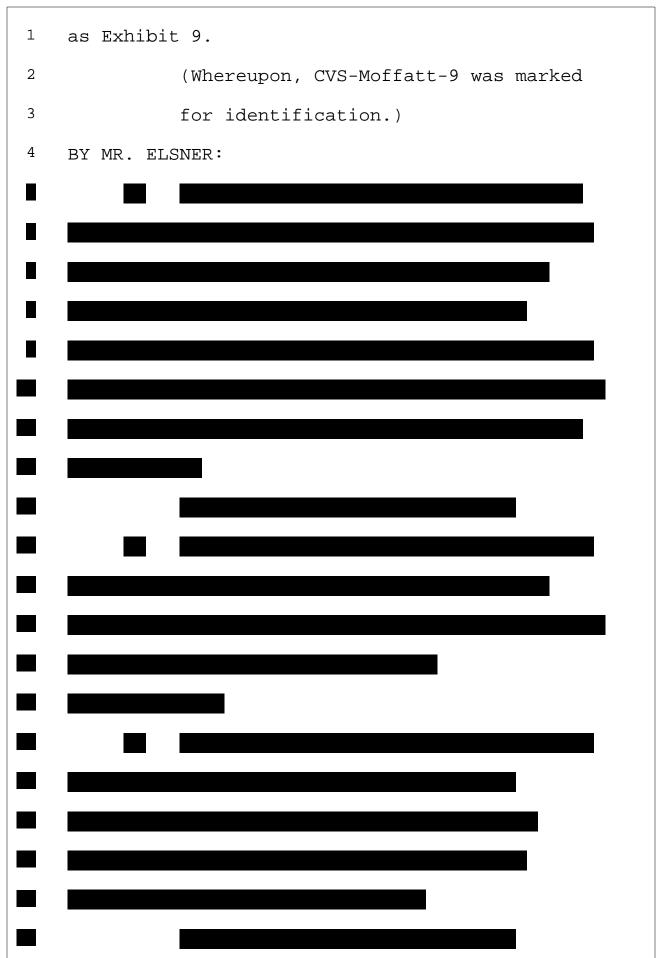


Case: 1:17-md-02804-DAP Doc#: 2173-44 Filed: 08/12/19 119 of 274 PageID #: 314628 Highly Confidential ty Review

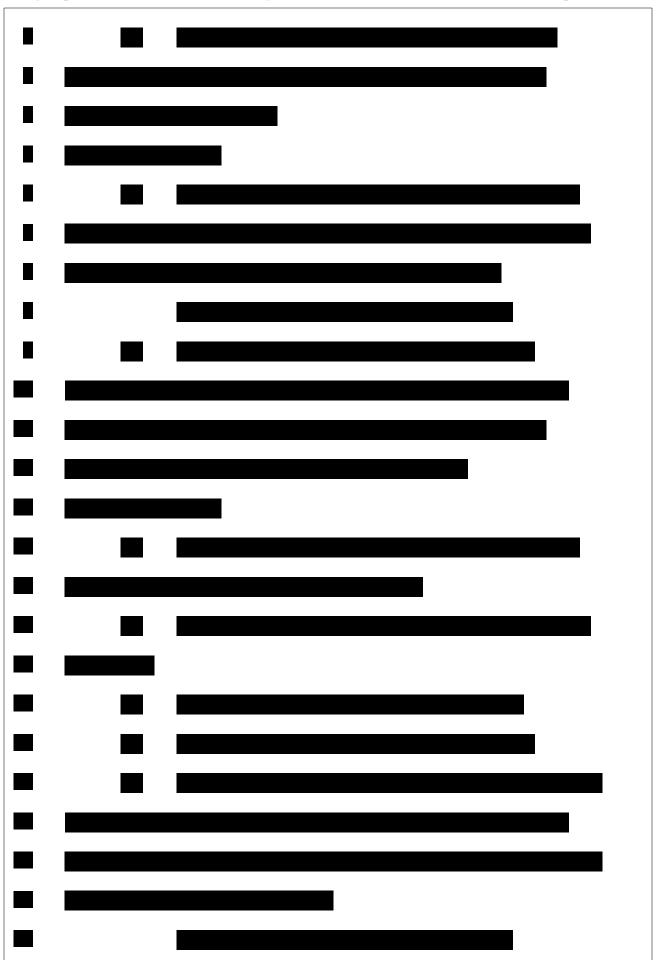




- 1 entitled to answers to these questions, and he's
- been coached to repeat the same phrase back to
- me and not answer any of the questions that I'm
- 4 asking him. I think it's totally improper, and
- 5 it's obstructive.
- 6 MR. DELINSKY: Your questions are
- 7 completely and totally improper. We've spent
- 8 the last hour on documents that Mr. Moffatt has
- 9 testified plainly that he has never seen before
- 10 concerning events that he has testified he is
- 11 not familiar with. You've continued to ask
- 12 question after question on these topics. That
- is what's improper about this line of questions.
- MR. ELSNER: It's not improper because
- he's the president of the entity, and I'm
- entitled to ask him whether he's been made aware
- of these activities, and if he has a view about
- 18 them. It's totally proper.
- MR. DELINSKY: But his role as
- 20 president of the entity is an administrative
- 21 role only. All operations are led and managed
- 22 by other persons, as he has testified. It is
- improper.
- MR. ELSNER: Mark this next document



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3 BY MR. ELSNER:

- 4 Q. I'd like to understand a little bit
- 5 about the process of purchasing controlled
- 6 substances at CVS.
- 7 CVS pharmacies fill prescriptions for
- 8 opioids, including OxyContin, oxycodone,
- 9 hydrocodone combination products, is that right?
- MR. DELINSKY: Object to form.
- 11 A. Others at CVS are responsible for
- 12 pharmacy purchasing. I'm not involved in that
- 13 process.
- 14 BY MR. ELSNER:
- Q. Do you know that that's what they
- 16 dispense?
- MR. DELINSKY: Object to form.
- 18 A. Others at CVS are responsible for
- 19 that, and I'm aware we dispense thousands of
- 20 drugs.
- 21 BY MR. ELSNER:
- Q. Right. Including opioids, right?
- MR. DELINSKY: Object to form.
- 24 A. Others are more knowledgeable about

- this, but generally speaking, I'm aware that
- opioids are among the drugs that we dispense.
- 3 BY MR. ELSNER:
- 4 Q. Do all CVS pharmacies dispense
- opioids, or only certain ones?
- 6 MR. DELINSKY: Object to form.
- 7 A. We have a handful of stores that don't
- 8 have pharmacies at all. I believe that the ones
- 9 that have pharmacies -- I don't know -- I don't
- 10 have particular information about what
- 11 prescriptions are filled at what pharmacies, so
- others in pharmacy operations would have
- information about that.
- 14 BY MR. ELSNER:
- Q. You're the president of various
- 16 pharmacy entities, is that right?
- 17 A. Yes, that's correct.
- 18 Q. And so for those pharmacies, are you
- aware whether they dispense opioids?
- MR. DELINSKY: Object to form.
- 21 A. Others in pharmacy operations are more
- versed in what stores fill what prescriptions.
- To the extent anybody gives me information, it's
- in my role as an attorney as opposed to in my

- 1 role as president of one of the store
- ² subsidiaries.
- 3 BY MR. ELSNER:
- Q. Is the fact that a CVS dispenses an
- opioid a privilege issue? Are you asserting
- 6 privilege over whether you dispense opioids or
- 7 not?
- MR. DELINSKY: Object to form.
- 9 You don't need to -- that question
- 10 should be directed to --
- 11 BY MR. ELSNER:
- 12 Q. You're the president of certain CVS
- 13 pharmacies. Do all those pharmacies dispense
- 14 opioids? Yes or no.
- MR. DELINSKY: He's already answered
- 16 the question, Mike. Asked and answered.
- 17 A. People in pharmacy operations know
- better than I do which pharmacies dispense which
- 19 drugs. That's not part of my role as a
- 20 corporate attorney.
- 21 BY MR. ELSNER:
- Q. I know. But I can't find the most
- 23 knowledgeable person on every single thing at
- 24 CVS to answer questions or this discovery period

- would last for decades. So I'm asking you, do
- you know whether the pharmacies of which you are
- 3 the president of, do they dispense opioids?
- 4 Yes, no, I don't know.
- 5 MR. DELINSKY: Object to form. It's
- 6 already been asked and it's already been
- 7 answered.
- MR. ELSNER: No. He's just said that
- 9 other people know more. But I didn't get the
- 10 answer.
- MR. DELINSKY: He said right at the
- beginning that he's not sure what pharmacies
- dispense what pharmaceuticals. He said it,
- 14 Mike. It's in the transcript.
- 15 BY MR. ELSNER:
- Q. I'd like to have an answer, please.
- 17 A. I'm not sure what pharmacies dispense
- what drugs. That's -- other people at CVS
- 19 handle that.
- Q. Did CVS ever purchase Schedule II
- 21 drugs like OxyContin or oxycodone directly from
- 22 manufacturers of those products?
- MR. DELINSKY: Object to form.
- A. Others at CVS are responsible for

- 1 pharmacy purchasing. To the extent we carried
- 2 any Schedule IIs, those would have come from,
- 3 from my understanding, wholesalers.
- 4 BY MR. ELSNER:
- 5 Q. Wholesalers?
- 6 A. Not from our distribution centers.
- 7 O. Correct.
- But would CVS ever purchase those
- 9 products directly from the manufacturer as
- opposed to a wholesaler like Cardinal or
- 11 McKesson?
- MR. DELINSKY: Object to form.
- 13 A. Others at CVS are responsible for
- 14 pharmacy purchasing. I have no knowledge of
- which drugs are purchased from where.
- 16 BY MR. ELSNER:
- 17 Q. Have you ever been involved in
- discussions with Purdue or any other
- 19 manufacturer of opioids concerning contracts to
- 20 purchase those drugs?
- MR. DELINSKY: Object to form.
- 22 A. I have not.
- 23 BY MR. ELSNER:
- Q. Do you generally know whether CVS has

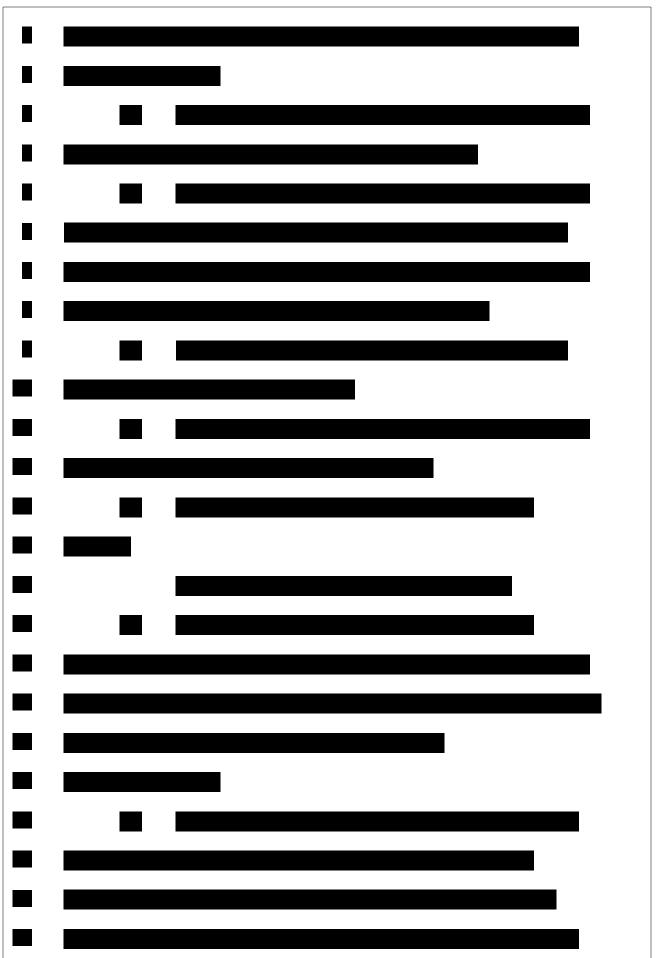
- 1 ever purchased Schedule II drugs directly from a
- 2 manufacturer of those drugs or not?
- 3 A. Other people at CVS would be
- 4 responsible for pharmacy purchasing. I don't
- 5 have any knowledge about that.
- 6 Q. The Schedule II drugs that CVS
- 7 purchased from wholesalers like Cardinal, would
- 8 CVS receive any type of incentive program or
- 9 rebate program from those wholesalers?
- MR. DAWSON: Object to form.
- MR. DELINSKY: Object to form.
- 12 A. Others at CVS were responsible for
- pharmacy purchasing, so I'm not knowledgeable
- 14 about that.
- 15 BY MR. ELSNER:
- 16 Q. Have you been involved at all in any
- of the contract negotiations or discussions with
- 18 Cardinal concerning agreements to purchase
- 19 controlled substances from them?
- MR. DAWSON: Object to the form.
- 21 A. Others at CVS were responsible for
- 22 that.
- 23 BY MR. ELSNER:
- Q. So you've never had a role with

- 1 respect to that?
- A. I don't recall ever having a role with
- 3 that.
- Q. With respect to the hydrocodone
- 5 products that were distributed by CVS Indiana,
- 6 did CVS Indiana purchase those drugs from a
- 7 wholesaler? Did it purchase hydrocodone from a
- 8 wholesaler or from the manufacturer of those
- 9 drugs?
- MR. DELINSKY: Object to form.
- 11 A. I'm not involved at all in pharmacy
- 12 purchasing, so I don't know whether they came
- 13 from a wholesaler or from manufacturers.
- 14 BY MR. ELSNER:
- Q. When a pharmacy would select a
- 16 particular -- order a particular drug like
- 17 hydrocodone or a Schedule II drug, would the
- 18 pharmacy sell -- pharmacist select where that
- 19 drug would be purchased from, or delivered from,
- or was that an automatic process?
- MR. DELINSKY: Object to form.
- 22 A. Others are involved in pharmacy
- 23 purchasing and ordering. The others, the people
- that are responsible for ordering, would know

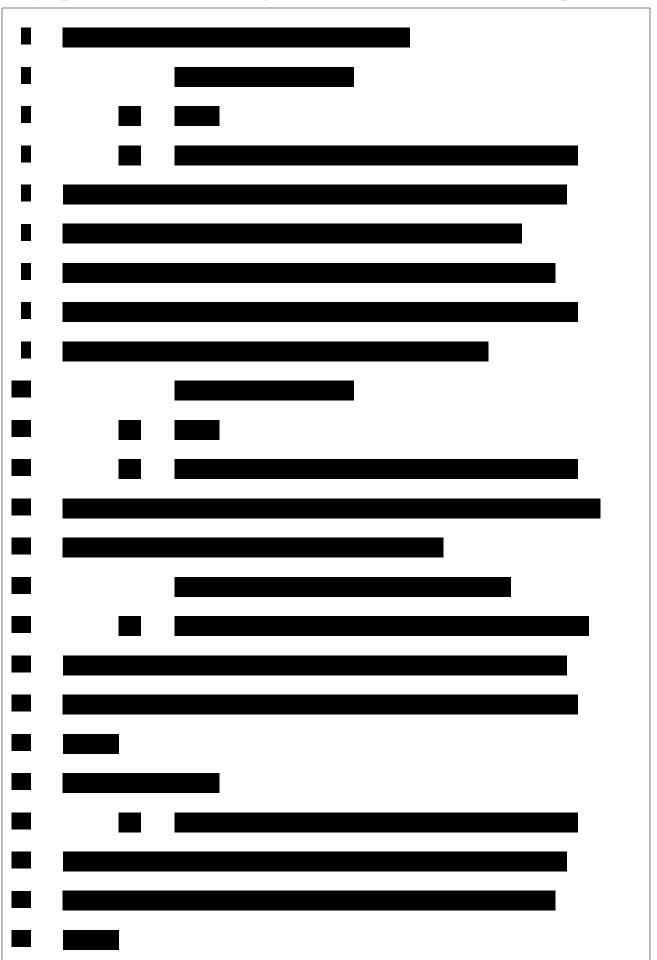
- 1 that. I don't know that.
- 2 BY MR. ELSNER:
- Q. You don't know that? Okay.
- 4 Would you agree with me that CVS,
- 5 given its size and market share, has a great
- 6 deal of data concerning the distribution and
- 7 dispensing of hydrocodone combination products?
- MR. DELINSKY: Object to form.
- 9 A. Others at CVS are responsible for
- whatever data we manage.
- 11 BY MR. ELSNER:
- 12 Q. Do you know how that data is used, if
- at all, in conducting analysis of controlled
- 14 substances to prevent diversion?
- MR. DELINSKY: Object to form.
- 16 A. Others in various departments would
- 17 have knowledge about that. I'm not involved in
- information management or how information is
- 19 used.
- 20 BY MR. ELSNER:
- Q. So you have no information about that?
- 22 A. Others at CVS would have information.
- 23 I am not involved in that process.
- Q. There came a time in which hydrocodone

```
was rescheduled from a Schedule III narcotic to
1
    a Schedule II narcotic. Are you aware of that?
2
3
              MR. DELINSKY: Object to form.
               I'm aware of it through, you know, my
4
5
    role as an attorney.
              MR. ELSNER: I'm going to mark this
6
7
    next document as Exhibit 10.
8
               (Whereupon, CVS-Moffatt-10 was marked
               for identification.)
9
10
    BY MR. ELSNER:
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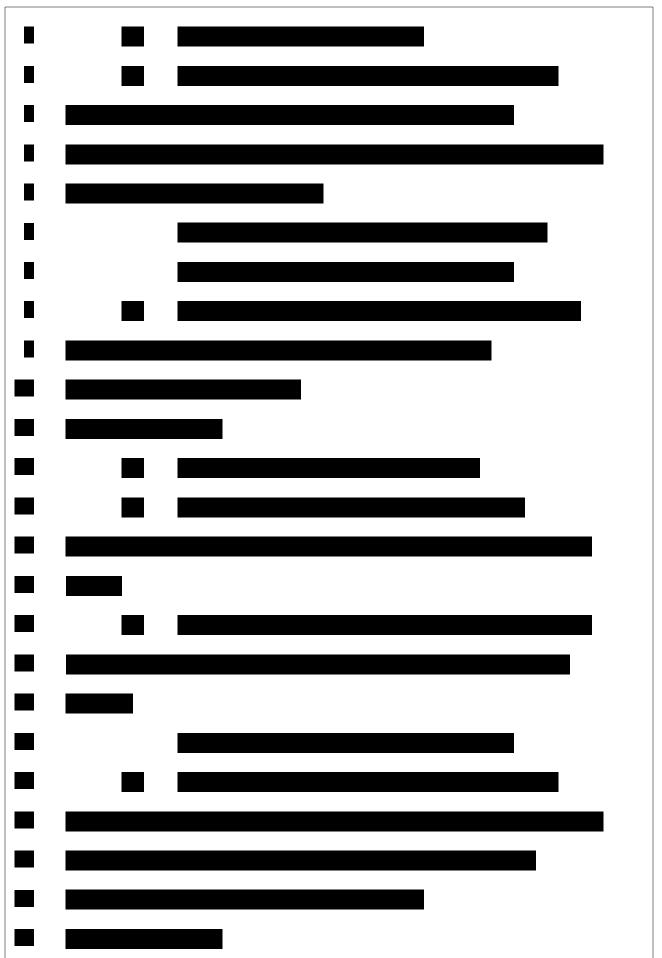
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11 BY MR. ELSNER: 12 Were you aware that the State of New Ο. 13 York had rescheduled hydrocodone from a Schedule 14 III to a Schedule II within the state in August 15 of 2012? 16 MR. DELINSKY: Object to form. 17 Others at CVS would have been Α. 18 responsible for which drug is coming from where, 19 so I was not involved in that process. 20 BY MR. ELSNER: 21 Generally when a state creates a 22 stricter requirement, either for the 23 distribution of a controlled substance or on some other basis, was it CVS's policy to follow 24

- 1 that stricter requirement within those states?
- MR. DELINSKY: Object to form.
- 3 A. Others at CVS would have been
- 4 responsible for how we complied with various
- 5 regulations. I'm not aware of how we addressed
- 6 the New York regulation that you just spoke of.
- 7 BY MR. ELSNER:
- Q. But do you understand that these
- 9 various regulations are minimum standards, and
- that CVS could always do more than the minimum
- 11 standard if it chose to?
- MR. DELINSKY: Object to form.
- 13 A. Again, others at CVS are responsible
- 14 for compliance and so forth, so they would be
- making that decision.
- 16 BY MR. ELSNER:
- Q. But they may be, but from your
- 18 perspective as the president of all sorts of
- 19 pharmacies, the president of distribution
- 20 centers, did you understand that when the
- 21 federal government created regulations that
- those were minimum standards that CVS could do
- 23 more?
- MR. DELINSKY: Object to the form of

- 1 the question.
- 2 A. Others at CVS are responsible -- were
- involved in that analysis. It's not part of my
- 4 role.
- 5 BY MR. ELSNER:
- 6 Q. Did you understand that CVS didn't --
- 7 wasn't required to distribute hydrocodone by the
- 8 government, right?
- 9 MR. DELINSKY: Object to form.
- 10 A. Others are responsible for which drugs
- 11 are distributed. I'm not aware of the
- 12 government requiring us to do anything. Pay
- taxes, but other than that...
- 14 BY MR. ELSNER:
- Q. Right. So there's no -- so CVS could
- 16 make a choice. They could choose to distribute
- 17 hydrocodone or not, right?
- MR. DELINSKY: Object to form.
- 19 A. Others are responsible for deciding
- what drugs we distribute.
- 21 BY MR. ELSNER:
- Q. Well, CVS had a decision to make
- whether to sell cigarettes or not, right?
- MR. DELINSKY: Object to form.

- 1 A. That's correct.
- 2 BY MR. ELSNER:
- Q. And CVS decided, I think wisely, not
- 4 to do so, and they made that decision, and the
- 5 same could have been chosen for hydrocodone,
- 6 right?
- 7 MR. DELINSKY: Object to form.
- 8 A. I suppose that's true. But tobacco
- 9 has no therapeutic value, unlike prescription
- 10 drugs.
- 11 BY MR. ELSNER:
- 12 Q. I agree.
- 13 A. So there's a very big difference
- between deciding not to sell tobacco and
- deciding not to sell a medication that many
- 16 people need.
- Q. Understood, and I agree with that
- 18 statement.
- But you would agree with me that
- there's no requirement for CVS to distribute
- 21 hydrocodone?
- MR. DELINSKY: Object to form. Asked
- 23 and answered.
- A. Again, other people make the decision

- of what drugs to sell. But I know that many
- 2 people need them, and I can't imagine a pharmacy
- deciding not to sell a drug that's needed.
- 4 BY MR. ELSNER:
- 5 Q. Under any circumstances?
- 6 A. It's not my decision.
- 7 O. CVS was a member of the National
- 8 Association of Chain Drugstores, correct?
- 9 A. Yes, and we still are. It's not was,
- 10 is.
- 11 O. Is. That's fair.
- 12 And that CVS contributes millions of
- dollars to the NACDS, isn't that right?
- MR. DELINSKY: Object to form.
- 15 A. I don't -- I'm not involved in what --
- 16 I don't know that we would contribute. I'm not
- 17 familiar with NAC -- our involvement with NACDS.
- 18 I know we're a member.
- MR. ELSNER: I'm going to mark this
- 20 next exhibit, which is Exhibit 11.
- 21 (Whereupon, CVS-Moffatt-11 was marked
- for identification.)
- 23 BY MR. ELSNER:
- O. This is also from CVS Health's

- 1 website. And it's Motley Rice 207.
- 2 And there's a section on the website
- 3 with Trade Association and Coalition
- 4 Participation.
- 5 Do you see that?
- 6 A. Yes.
- 7 Q. Okay. If you turn to the next page,
- 8 there's a listing here among the trade
- 9 associations as the National Association of
- 10 Chain Drugstores.
- 11 Do you see that?
- 12 A. Yes.
- Q. Okay. And on the top, this is a list
- of contributions/dues to the trade associations
- and coalitions. That's what the banner reads on
- 16 the top of the page, is that right?
- 17 A. Yes.
- 0. Okay. And next to the National
- 19 Association of Chain Drugstores, the
- 20 contribution from January, 2017 to March, 2018
- was a little over \$1.5 million, right?
- 22 A. Yes.
- Q. Okay. And then if you go to the next
- page, 2016, for National Association of Chain

- 1 Drugstores the amount was over \$1.4 million in
- dues and contributions, is that right?
- 3 A. The way it's characterized is
- 4 contributions/dues. In some cases it's
- 5 contributions. In other cases it's dues.
- 6 Q. But regardless, the number in 2016 for
- 7 the National Association of Chain Drugstores was
- 8 \$1.4 million, is that right?
- 9 A. That -- yes, that's what this says.
- 0. And for 2015, that amount was also
- 11 about a little over \$1.4 million.
- MR. DELINSKY: I'm sorry. What year,
- 13 Mike?
- MR. ELSNER: 2015 on the next page.
- A. Again, that's what this says, yes.
- 16 BY MR. ELSNER:
- Q. On the next page, in 2014 that amount
- was \$1.2 million?
- 19 A. That's what this says, yes.
- 20 O. So you'd agree with me that CVS Health
- was contributing dues and other contributions to
- 22 the National Association of Chain Drugstores at
- least during this period of time over a million
- dollars a year, is that right?

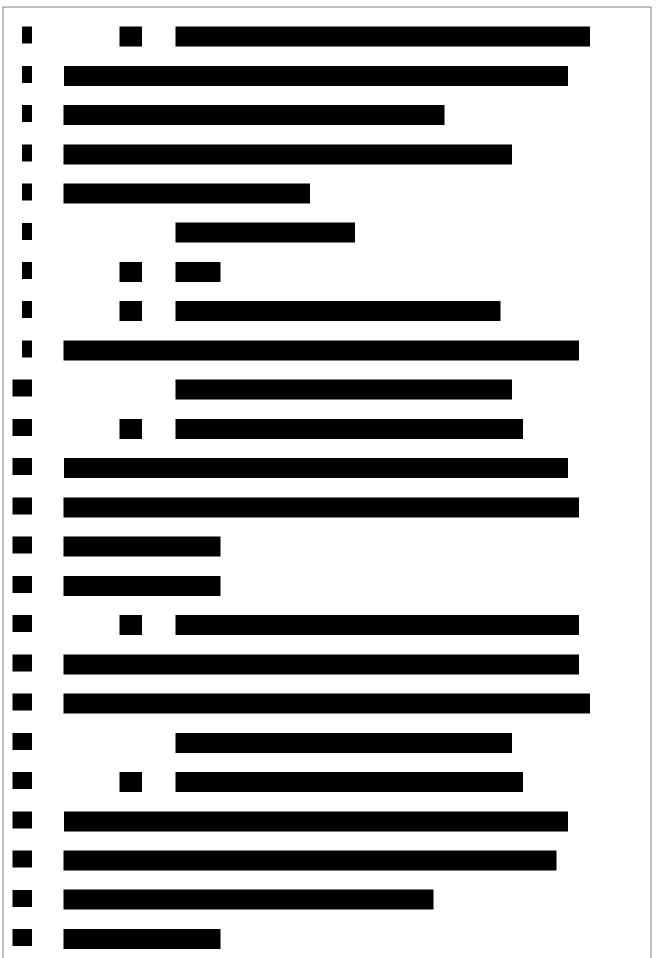
- MR. DELINSKY: Object to form.
- 2 A. During the time frame that we were
- ³ just reading, yes. It looks like it was lower
- 4 in the prior years.
- 5 BY MR. ELSNER:
- 6 O. Yes, that's true. That's correct.
- 7 In 2013, that amount was half a
- 8 million dollars, is that right?
- 9 A. Let's see.
- Q. That's Page 6.
- 11 A. Yes. 526,000.
- 12 Q. In 2012 it was 421,000, is that right?
- 13 A. Yes.
- 0. Okay. Do you know why the amount
- doubled in 2013 and '14, around the same time
- that hydrocodone was being rescheduled by the
- 17 United States Government?
- 18 A. I have no involvement in how dues are
- 19 paid for these organizations, so others at CVS
- would be knowledgeable about that.
- Q. Are you aware that various executives
- of CVS have served as directors of the National
- 23 Association of Chain Drugstores?
- MR. DELINSKY: Object to form.

- 1 A. Yes, I am aware of that.
- 2 BY MR. ELSNER:
- Q. Do you know that Larry Merlo served as
- 4 the president and -- who is the president and
- 5 chief executive officer of CVS Health, he served
- 6 as the director of the National Association of
- 7 Chain Drugstores in 2015?
- MR. DELINSKY: Object to form.
- 9 A. Larry Merlo is his name. I'm not
- 10 familiar with what specific role he played at
- 11 NACDS.
- 12 BY MR. ELSNER:
- Q. Okay. But you were generally aware
- 14 that there were directors of CVS or executives
- 15 at CVS that served in leadership positions with
- 16 the National Association of Chain Drugstores?
- 17 A. Yes, I was aware of that.
- Q. Okay. Do you know who in particular?
- 19 A. Mr. Merlo, as you said. I believe
- John Roberts might have been another.
- 21 Q. Okay.
- A. Again, I'm not really involved in our
- relationship with NACDS.
- Q. What about -- is it Kevin Hourican?

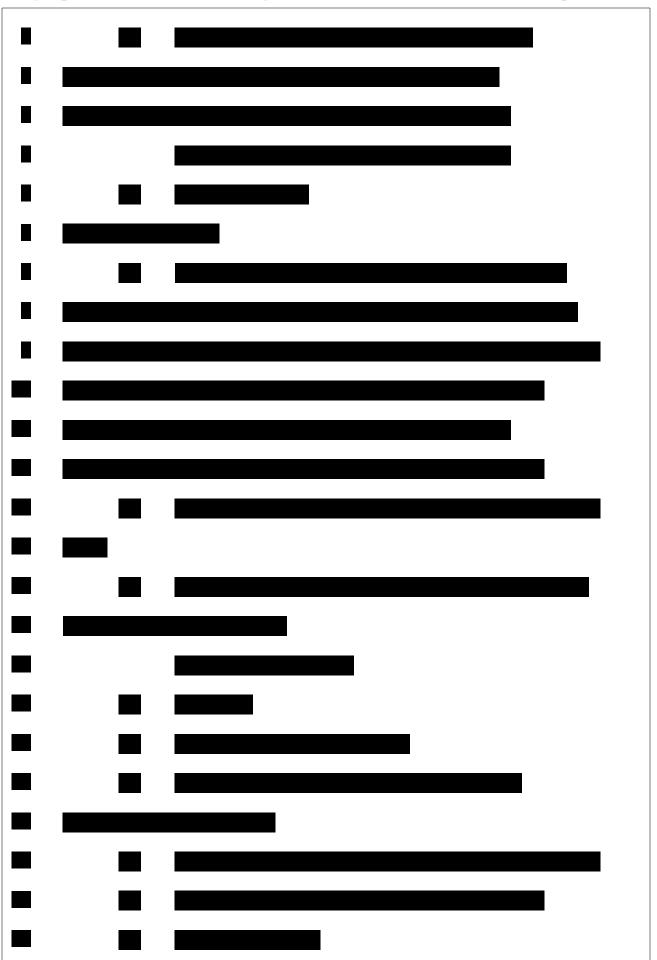
- 1 A. Hourican. I know Kevin. I'm not
- familiar with any role he might play at NACDS.
- O. And he was the executive vice
- 4 president of CVS Health and the president of CVS
- 5 Pharmacy at one point in time, is that right?
- 6 A. That's his current title.
- 7 Q. Current title?
- 8 A. Yeah, in 2018 he became that.
- 9 Q. He became that.
- What about the Healthcare Distribution
- 11 Management Association, were you aware that CVS
- was a member of that trade association?
- MR. DELINSKY: Object to form.
- 14 A. I'm not familiar with that trade
- 15 association. I'm not involved in which
- 16 associations we participate in.
- 17 BY MR. ELSNER:
- 0. Were you aware that the National
- 19 Association of Chain Drug Stores had opposed the
- 20 rescheduling of hydrocodone?
- 21 A. I'm not -- others at CVS were involved
- 22 with NACDS. We're not -- obviously we're not
- the only participant in that organization, so
- 24 I'm not familiar with NACDS's activities.

1 Did you know that NACDS was opposing Ο. 2 the rescheduling of hydrocodone combination 3 products? MR. DELINSKY: Object to form. 4 Others at CVS were involved with 5 Α. NACDS. I was not familiar with our relationship 6 7 and what their activities might have been. 8 (Whereupon, CVS-Moffatt-12 was marked for identification.) 9 10 BY MR. ELSNER: I'm going to mark this as Exhibit 12. 11 Ο. 12 This is CVS-103475.

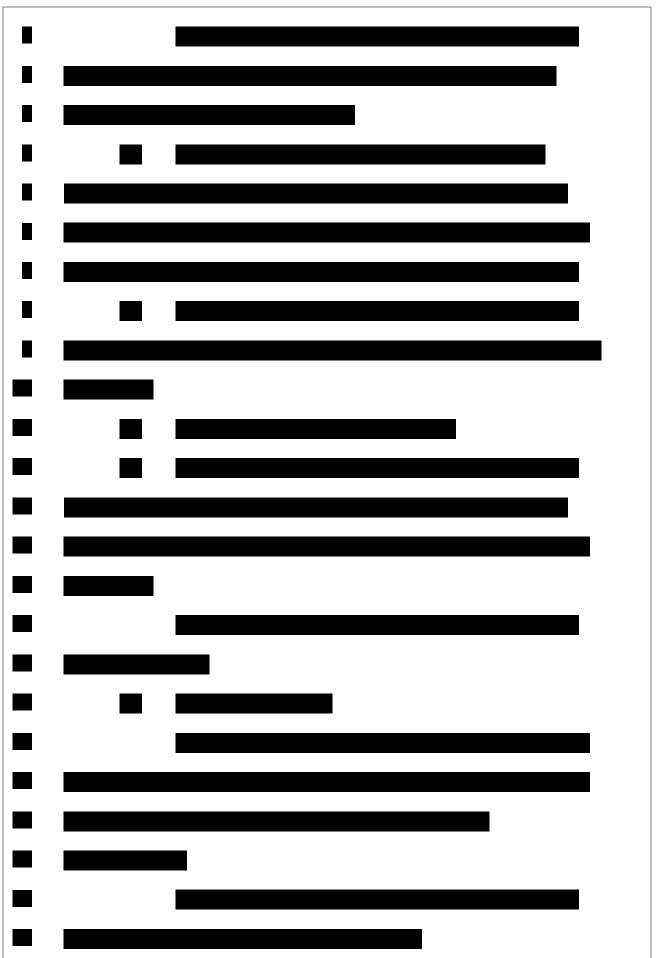
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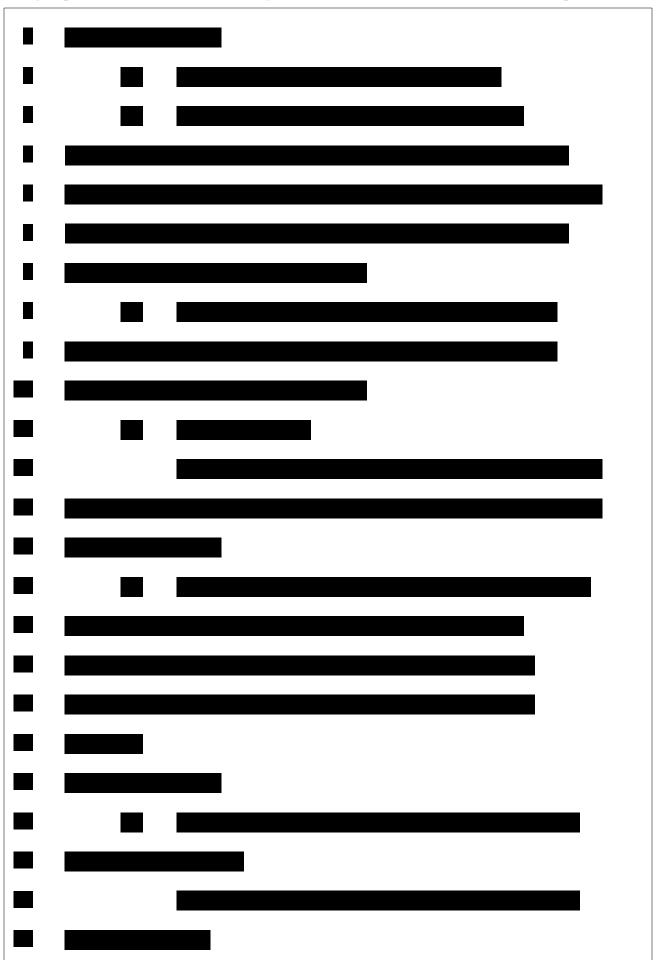
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Case: 1:17-md-02804-DAP Doc#: 2173-44 Filed: 08/12/19 149 of 274 PageID #: 314658 Highly Confidential Ey Review



Case: 1:17-md-02804-DAP Doc#: 2173-44 Filed: 08/12/19 150 of 274 PageID #: 314659 Highly Confidential Ey Review



- 7 Did CVS support the rescheduling of Ο. 8 hydrocodone or not? Others at CVS would be responsible for 9 10 that.
- Q. Do you know the profit margin on the 11
- 12 dispensing of hydrocodone products?
- 13 Others at CVS are involved in the Α.
- 14 financials. That's not my area.
- 15 Are you aware of the profit margin on Ο.
- 16 distributing hydrocodone combination products at
- 17 CVS?
- 18 MR. DELINSKY: Object to the form.
- Others at CVS are responsible for all 19 Α.
- 20 financial information.
- 21 BY MR. ELSNER:
- 22 Are you aware that as a member of the Q.
- National Association of Chain Drug Stores that 23
- 24 CVS participated in an amicus brief in the

- 1 Masters case?
- MR. DELINSKY: Object to the form of
- 3 the question.
- 4 A. Others at CVS are involved with any
- 5 involvement we have with NACDS. I'm not
- 6 familiar with the Masters case or any amicus
- 7 brief.
- 8 BY MR. ELSNER:
- 9 Q. Have you ever read the Southwood
- decision or the Masters decision?
- 11 A. Others at CVS would be -- would follow
- that sort of thing more closely. It's possible,
- 13 but I don't recall.
- 0. Did you know that CVS through these
- trade associations participated in an amicus
- 16 brief in the Masters case?
- MR. DELINSKY: Object to the form of
- 18 the question.
- 19 A. Others at CVS were involved with
- NACDS, so they would be informed about that.
- 21 BY MR. ELSNER:
- Q. Who at CVS would have made the
- decision to participate or not in that amicus
- 24 brief?

- 1 A. I am not sure. I don't know.
- Q. Would it have been a decision in the
- legal department, or would it have been a
- 4 decision in the regulatory affairs department?
- 5 MR. DELINSKY: Object to form.
- 6 A. Generally speaking, legal matters are
- 7 legal -- the legal department decisions
- 8 ultimately.
- 9 BY MR. ELSNER:
- Q. And who in the legal department would
- 11 have made that decision?
- MR. DELINSKY: Object to form. Asked
- 13 and answered.
- 14 A. Others in the legal department. I'm
- 15 not really sure. It would depend on the type of
- 16 matter, and I'm not familiar with the Masters
- 17 case. I don't know.
- 18 BY MR. ELSNER:
- Q. Okay. Well, the Masters decision
- involved a suspicious order monitoring program
- 21 and whether it met the requirements of the
- 22 Controlled Substances Act. So assuming that to
- be the case, who within the legal department
- would have made the decision to participate or

- 1 not in the Masters amicus brief filed by the
- 2 National Association of Chain Drugstores?
- 3 A. I'm not sure. It would probably be --
- 4 I don't know. I don't know enough about the
- 5 matter.
- 6 Q. Have you ever attended any CLE
- 7 programs at CVS or anywhere else that discussed
- 8 the Masters decision?
- 9 A. I don't recall any CLEs that discussed
- it, but we do a lot of them.
- MR. ELSNER: Why don't we take a quick
- 12 break.
- THE VIDEOGRAPHER: We're going off the
- 14 record at 11:05 a.m.
- 15 (Whereupon, a recess was taken.)
- THE VIDEOGRAPHER: We're back on the
- 17 record at 11:17 a.m.
- 18 BY MR. ELSNER:
- Q. Mr. Moffatt, you are aware that there
- 20 have been instances in which the DEA has issued
- 21 suspension orders to CVS pharmacies, correct?
- 22 A. I am aware of that.
- Q. Okay. And you understand that when a
- 24 pharmacy or a distribution center is not

- 1 adhering to the requirements of the Controlled
- 2 Substances Act that there's a danger that that
- 3 facility or pharmacy could lose its DEA license
- 4 or registration, correct?
- 5 MR. DELINSKY: Object to form.
- A. I'm aware that that has happened, you
- 7 know. It's not my area, other people handle
- 8 that sort of thing.
- 9 BY MR. ELSNER:
- Q. But you're aware that the DEA has that
- 11 authority, right?
- 12 A. I'm generally aware.
- 13 Q. Okay. And are you aware of any other
- 14 actions that the DEA could take against a
- 15 pharmacy or distribution center other than
- issuing a suspension order?
- 17 A. It's not my area. I don't handle the
- government investigation type things, but I'm
- aware that there are other penalties and fines
- 20 and letters and so forth.
- Q. And there are actions that could be
- 22 brought by the DEA against those pharmacies to
- remove those registrations and licenses, is that
- 24 right?

- MR. DELINSKY: Object to form.
- A. Again, not my area, but I'm generally
- 3 aware that that's possible, yes.
- 4 BY MR. ELSNER:
- Okay. And you're aware, are you not,
- 6 that the DEA issued an immediate suspension
- 7 order for two CVS pharmacies in Florida because
- 8 they posed an imminent danger to public health
- 9 or safety, correct?
- MR. DELINSKY: Object to form.
- 11 A. I am aware of the action in Florida.
- 12 I don't know about the characterization as to
- the reason that you stated.
- 14 BY MR. ELSNER:
- Q. Okay. You know that the DEA suspended
- 16 two CVS pharmacies from distributing controlled
- 17 substances in Florida, is that right?
- MR. DELINSKY: Object to form.
- 19 A. I am aware of that situation, yes.
- 20 BY MR. ELSNER:
- Q. And those pharmacies were the Holiday
- 22 CVS, LLC pharmacies, numbers 5195 and 219, is
- 23 that right?
- A. Those store numbers sound familiar.

- 1 We have a lot of stores. Holiday CVS operates
- 2 all or virtually all the stores in Florida.
- Q. And you're the president of Holiday
- 4 CVS, or were, is that right?
- 5 A. I am currently, since the same time
- frame as Indiana and Rx Services, early 2011.
- 7 Q. In what year did you become the
- 8 president of Holiday CVS?
- 9 A. I think it would have been the
- beginning of 2012.
- 11 Q. Okay. And prior to that were you a
- 12 secretary of Holiday CVS?
- 13 A. Yes.
- Q. Starting in 2006, or was it before?
- 15 A. Again, I don't know specific titles
- 16 for specific entities back at that time frame.
- 17 I might have been assistant secretary and then
- 18 secretary. But probably secretary at that
- 19 point.
- Q. Okay. And are you the president of
- 21 Holiday CVS today?
- 22 A. Yes.
- MR. ELSNER: I'm going to mark this as
- 24 Exhibit 13.

- 1 (Whereupon, CVS-Moffatt-13 was marked
- for identification.)
- 3 BY MR. ELSNER:
- 4 Q. And this is a declaration of Joseph
- 5 Rannazzisi. And we've seen that name before.
- 6 He was with the DEA at this time, is that right?
- 7 A. Yes, that's what it says in the first
- 8 couple paragraphs here.
- 9 Q. All right. He's the deputy assistant
- 10 administrator for the DEA's Office of Diversion
- 11 Control at this time in 2012, is that right?
- MR. DELINSKY: Object to form.
- 13 A. That's what the Paragraph 1 says, yes.
- 14 BY MR. ELSNER:
- Q. All right. The caption here is for an
- 16 action that was filed in the U.S. District Court
- 17 for the District of Columbia, Holiday CVS versus
- 18 Eric Holder.
- Do you see that?
- A. Yes, I see the caption.
- Q. And are you aware this action was
- taken in the district court in DC?
- 23 A. Others in the legal department would
- have been involved in this. I'm not familiar

- with this particular action. So I see that, you
- 2 know, it's Holiday CVS, Eric Holder was attorney
- general, but I don't know anything about, you
- 4 know, this matter.
- 5 Q. So as the president of Holiday CVS,
- 6 you didn't know that this action was pending in
- 7 federal court in DC?
- MR. DELINSKY: Object to form.
- 9 A. To the extent I knew anything about
- it, it would have been in my role as an
- 11 attorney, so...
- 12 BY MR. ELSNER:
- Q. Before we get to what you know, did
- 14 you know that it existed or not, the filing was
- 15 made?
- MR. DELINSKY: Objection. Asked and
- answered.
- 18 A. I would need to know more about the
- 19 case. Just reading the caption.
- 20 BY MR. ELSNER:
- Q. Fair enough.
- A. I'm not a litigator. I'm a corporate
- guy, so I would need to know more about where
- this fits into the whole picture.

- 1 Q. Okay. Let's go through it a little
- 2 bit.
- If you turn to Paragraph 3 of the
- 4 declaration, which is on Page 2, in the second
- 5 sentence it reads "I participated in the
- 6 decision-making process that led to the issuance
- of an Immediate Suspension Order against Holiday
- 8 CVS, CVS Pharmacy 219 and CVS Pharmacy 5195 on
- 9 February 2, 2012." Is that right?
- 10 A. Yes, that's what that says.
- 11 Q. Okay. And this was filed in 2012, and
- 12 so at this time you were the president of
- 13 Holiday CVS?
- 14 A. I believe so, yes.
- Q. Okay. If you turn to Page 9 of the
- declaration, which is Paragraph 24, there's a
- heading "CVS 219 and CVS 5195." And if it's
- 18 easier to use the screen, that's available for
- 19 you, or the paper, whatever you'd prefer.
- It says in Paragraph 24 that CVS 219
- was located at 3798 Orlando Drive in Sanford,
- Florida, and is registered with the DEA as a
- chain pharmacy in Schedules II, III, IV and V
- controlled substances under a DEA registration

- 1 number. And then in Paragraph 25 it says CVS
- 2 5195 was located at 4639 West 1st Street in
- 3 Sanford, Florida.
- 4 Do you see that?
- 5 A. Yeah, well, it says "located at," not
- 6 "was." They still are. Yeah.
- 7 O. I wasn't sure about store 5195. Are
- 8 you? Is it still located at that address?
- 9 A. I'm not sure. I don't know the
- 10 particulars for all of this.
- 0. That's why I said "was" because I
- don't know if today it's located at the same
- 13 address. Do you know?
- 14 A. I don't know. I don't know the
- particulars. I just know that the store still
- 16 exists.
- Q. Were you aware that these were the two
- stores that were the subject of the DEA
- 19 suspension in 2012?
- MR. DELINSKY: Object to form.
- Objection, asked and answered.
- 22 A. I am aware of that because, you know,
- 23 I was informed based on my role as an attorney.
- 24 BY MR. ELSNER:

- Q. Okay. And these two stores were
- 2 Holiday CVS stores, correct?
- A. That's correct.
- Q. Okay. It says in the next section,
- 5 "Notice to CVS of Diversion Problems." In
- 6 Paragraph 26 it says that "On December 8, 2010,
- 7 DEA hosted a meeting with CVS at the DEA West
- 8 Palm Beach Resident Office." And then it lists
- 9 a group of people who were in attendance.
- Were you aware that CVS held a
- 11 meeting -- I'm sorry, that the DEA held a
- meeting with CVS long before the suspension
- order was issued in December of 2010 to warn
- them of problems of diversion from their
- 15 pharmacies?
- MR. DELINSKY: Object to form.
- 17 A. I'm not at all familiar with this
- document, so I don't know the context of how
- this was put together. I wasn't involved in the
- meeting certainly, so I don't really know
- 21 anything about what was said or anything at the
- 22 meeting.
- MR. DELINSKY: Mike, just hold on.
- Did you say you were not, wasn't involved in the

- 1 meeting?
- THE WITNESS: Exactly. I was -- no,
- 3 I'm not on the list here.
- 4 MR. DELINSKY: Okay.
- 5 THE WITNESS: So, no, I was not
- 6 involved, and I wouldn't have been. It's not my
- 7 area.
- 8 BY MR. ELSNER:
- 9 Q. In Paragraph 27 it says that John
- 10 Gilbert, Counsel for CVS/Caremark, made a brief
- 11 statement. "Mr. Gilbert stated," this is a
- 12 quote from Mr. Rannazzisi's affidavit, "that CVS
- was aware of the pill mill and/or pain clinic
- 14 situation and the diversion of controlled
- 15 substances, primarily oxycodone, in Florida."
- What was CVS aware of the pain mill
- 17 and pain clinic situation in Florida at this
- 18 time?
- MR. DELINSKY: Object to form.
- A. I don't know anything about this
- 21 meeting, or if this is an accurate
- 22 characterization of what he said. I don't know
- 23 Mr. Gilbert. Again, it's not my area.
- 24 BY MR. ELSNER:

- 1 Q. You don't know Mr. Gilbert, counsel
- 2 for CVS/Caremark?
- A. That's not a real entity name, but
- ⁴ just as a corporate lawyer, that bugs me a
- 5 little bit. But I know Mr. Gilbert. I know the
- 6 name. But again, I think he's a litigator. And
- 7 I'm not a litigator, I'm a corporate person, so
- 8 I've seen the name, but I've never interacted
- 9 with him.
- 10 Q. Is he in-house at CVS, or is he
- 11 outside counsel?
- 12 A. He's outside counsel.
- Q. Do you know what firm he's with?
- 14 A. I don't. I didn't have direct
- 15 involvement with him.
- 16 Q. And as the president of Holiday CVS,
- no one informed you of the pill mill and/or pain
- 18 clinic situation in Florida?
- MR. DELINSKY: Object to form.
- 20 A. Others at CVS would have been
- 21 responsible for that sort of thing. Nobody
- informed me of anything as president. Again, as
- a lawyer for the company I may have been
- informed, but not as president.

- 1 BY MR. ELSNER:
- Q. If you turn to Paragraph 29 on
- 3 Page 11, it reads "CVS 219's and CVS 5195's
- 4 District Supervisor, Jennifer Lalani,
- 5 acknowledged that she was aware of an increase
- 6 in the number of oxycodone prescriptions that
- 7 have been presented to CVS, especially in the
- 8 Orlando, Florida area." She then says that
- 9 she -- Mr. Rannazzisi says that "Ms. Lalani also
- 10 made reference to an October '10 letter sent to
- the pharmacies from the Hillsborough County
- 12 Sheriff David Gee. In that letter, Sheriff Gee
- made a plea to area pharmacies to work with law
- 14 enforcement and closely scrutinize the
- 15 prescriptions they receive in order to deal with
- the prescription drug epidemic in Florida."
- Were you aware that CVS pharmacies
- that you were president of received a letter
- 19 from the sheriff in Hillsborough County?
- MR. DELINSKY: Object to form.
- 21 A. Others at CVS would have been
- responsible for operations and compliance, and
- they would have been informed of this. I would
- 24 not have been informed of this.

- 1 BY MR. ELSNER:
- Q. And you were not?
- A. Others at CVS that were responsible
- 4 for this sort of thing were aware.
- 5 Q. But you were not?
- 6 A. Others were.
- 7 Q. Others were, but you were not, right?
- A. I may have been informed of something
- 9 in my capacity as an attorney. I don't recall.
- 10 Q. If you turn to Page 32, it reads
- "Mrs. Lalani" -- sorry, I'll let you get there.
- 12 Not Page 32, sorry, Page 12, Paragraph 32. My
- 13 apologies.
- 14 It reads "Ms. Lalani confirmed that
- 15 CVS 219 was located in Sanford, Florida and was
- under her supervision. Ms. Lalani agreed that
- the volume of oxycodone purchased by this
- pharmacy was extremely high; Ms. Lalani was
- unable to explain why the volume was so high."
- Were you aware that the two
- 21 pharmacies -- that CVS 219 that you were the
- 22 president of had a high volume of oxycodone
- purchased by this pharmacy?
- MR. DELINSKY: Object to form.

- 1 A. Others at CVS would have been
- 2 responsible for operations and compliance, and
- 3 they would have been involved in this. I wasn't
- 4 informed as president. As an attorney I may
- 5 have been informed of things, but I don't recall
- 6 seeing this.
- 7 BY MR. ELSNER:
- Q. It then reads in Paragraph 33 that on
- 9 August 12, 2011 that the DEA hosted a second
- 10 meeting with CVS at the DEA Weston Resident
- 11 Office, and that in attendance at the meeting
- were DEA representatives and 24 supervisors and
- managers from various South Florida CVS
- 14 pharmacies.
- Were you aware that the DEA hosted a
- 16 second meeting solely as president of CVS
- 17 Holiday Inn August 12, 2011?
- 18 A. Others at CVS would have been involved
- in this -- this situation, but I don't recall
- 20 being involved in it.
- Q. As president of CVS Holiday, you were
- 22 not informed, correct?
- MR. DELINSKY: Object to form.
- A. Others would have been involved in

- this type of meeting. You know, as an attorney
- 2 I may have been informed about it, but not as
- 3 president.
- 4 BY MR. ELSNER:
- Q. Were you aware that the DEA conducted
- 6 an investigation of these two pharmacies, CVS
- 7 pharmacies in Florida, and interviewed employees
- 8 as part of its investigation?
- 9 A. Others would have been involved
- directly in that situation. I was not involved
- 11 in that.
- 12 Q. If you turn to Page 15 of the
- 13 affidavit, Paragraph 41, it says the "DEA
- 14 personnel interviewed employees from both CVS
- 15 219 and CVS 5195." And under A, it says that
- 16 "The Pharmacist in Charge at CVS 219...stated
- that the majority of the diagnosis codes listed
- 18 by the prescribing practitioners on the
- oxycodone prescriptions were the same, and that
- 20 customers requested certain brands of oxycodone,
- referring to them as 'Ms' or 'blues.'"
- Were you aware of that?
- A. I was not. The others were involved
- in this situation. I was not directly involved.

- 1 And I don't know if that's Ms. or Ms. But in
- any event, other attorneys would have been
- 3 involved in this type of situation.
- 4 BY MR. ELSNER:
- 5 Q. Have you heard of oxycodone being
- 6 referred to as Ms?
- 7 A. No. I just didn't see a period,
- 8 that's why I said Ms as opposed to Ms. I am not
- 9 aware of them being referred to by either name.
- 10 Q. Under paragraph B it reads "One of the
- pharmacists at CVS 219...stated that many of the
- 12 patients receiving oxycodone prescriptions
- 13 received the same cocktail of prescriptions,
- including oxycodone 30 milligrams, oxycodone
- 15 15 milligrams, alprazolam 2 milligrams."
- Were you aware that individuals coming
- 17 to CVS 219 were -- held prescriptions for a
- 18 cocktail of drugs?
- MR. DELINSKY: Object to form.
- 20 A. I was not involved in any of this. I
- wasn't there. I don't know that that's her
- 22 characterization of the group of prescriptions
- or if it's the -- Mr. Rannazzisi. But, you
- know, you've read that correctly.

- 1 BY MR. ELSNER:
- Q. Well, it states here that Susan Masso,
- who is one of the pharmacists at CVS, "stated
- 4 that many of the patients."
- 5 Do you see that there?
- 6 MR. DELINSKY: Object to form.
- 7 A. I do see that, and I see the word
- 8 "cocktail" in quotes, and I don't know if that
- 9 means that's a quote from her or if that's his
- 10 characterization of the group of prescriptions.
- 11 BY MR. ELSNER:
- 12 Q. Well, regardless, she said patients
- were coming in with prescriptions for multiple
- 14 different drugs that are listed there, oxycodone
- 30 milligrams and 15 milligrams and the others,
- 16 correct?
- A. Again, I was not involved in this,
- others were. That is what this paragraph says.
- Q. Okay. And in paragraph C it reads
- that "The Pharmacist in Charge at CVS 5195,
- Jessica Merrill, stated that she set a daily
- limit of how many oxycodone 30-milligram
- 23 prescriptions the pharmacy would fill each day.
- The limit was set based upon the amount of

- 1 oxycodone the pharmacy had on-hand each day.
- 2 PIC Merrill" stated "that the reason she set
- 3 this daily limit was to ensure that the pharmacy
- 4 had enough oxycodone 30 milligrams to fill the
- 5 prescriptions for 'real pain patients.'"
- 6 Were you aware of that?
- 7 MR. DELINSKY: Object to form.
- 8 A. I was not involved in this. Other
- 9 attorneys were. I was not at the interview or
- anything like that, so this is the first I'm
- 11 reading of it.
- 12 BY MR. ELSNER:
- Q. Well, as an executive at CVS, would it
- 14 concern you that a CVS Pharmacy was dispensing
- drugs to patients that were not in real pain,
- 16 oxycodone in particular?
- MR. DELINSKY: Object to form.
- 18 A. I was not involved in this at all, and
- 19 I don't know anything about how this was being
- 20 characterized, so I don't have a view on that.
- 21 BY MR. ELSNER:
- Q. Well, do you have any reason to
- believe it's being mischaracterized by Joseph
- 24 Rannazzisi?

- 1 A. I have no reason to believe either way
- whether it is correct or incorrect. I wasn't --
- Q. You're not suggesting that he lied
- 4 under oath?
- 5 A. No. I'm saying I -- you know, I
- 6 wasn't there, I don't know -- I wasn't at any of
- 7 these interviews, don't know anything about it.
- Q. Well, does it concern you as an
- 9 executive at CVS that pharmacists were saving
- aside oxycodone in the height of the opioid
- 11 epidemic for, I quote, real pain patients?
- MR. DELINSKY: Object to form.
- 13 Objection, asked and answered.
- 14 A. You know, I'm not involved in this
- area, and I don't have a view on it.
- 16 BY MR. ELSNER:
- 17 Q. I know, but you've been at CVS a
- 18 really long time. Does it concern you, this
- paragraph? Does it concern you if it's true?
- MR. DELINSKY: Object to form.
- Objection, asked and answered.
- 22 A. CVS is -- we aim to comply with laws,
- 23 and so I -- you know, generally speaking that's
- how we operate, so I would be concerned if we

- were not, but I have no information to lead me
- 2 to believe one way or another.
- 3 BY MR. ELSNER:
- Q. But this would indicate that, in fact,
- 5 in this instance CVS was not complying with
- 6 federal regulations, that they were, in fact,
- 7 selling drugs, oxycodone in particular, to
- 8 patients that they knew were not in real pain,
- 9 correct?
- MR. DELINSKY: Object to form.
- 11 A. I wasn't involved in the interviews.
- 12 I don't know anything about the interviews, so I
- can't really form on opinion on that.
- 14 BY MR. ELSNER:
- Q. If you turn to Page 57 -- sorry,
- 16 Page 24, Paragraph 57. There's a heading just
- above that paragraph that says the "DEA Issues
- 18 Immediate Suspension Orders for CVS 219 and CVS
- 19 5195," correct?
- A. Just above that paragraph, yes, I see
- 21 that.
- Q. And then it says that "Through my
- 23 training and experience" -- and this is Joseph
- 24 Rannazzisi's declaration again -- "as both a law

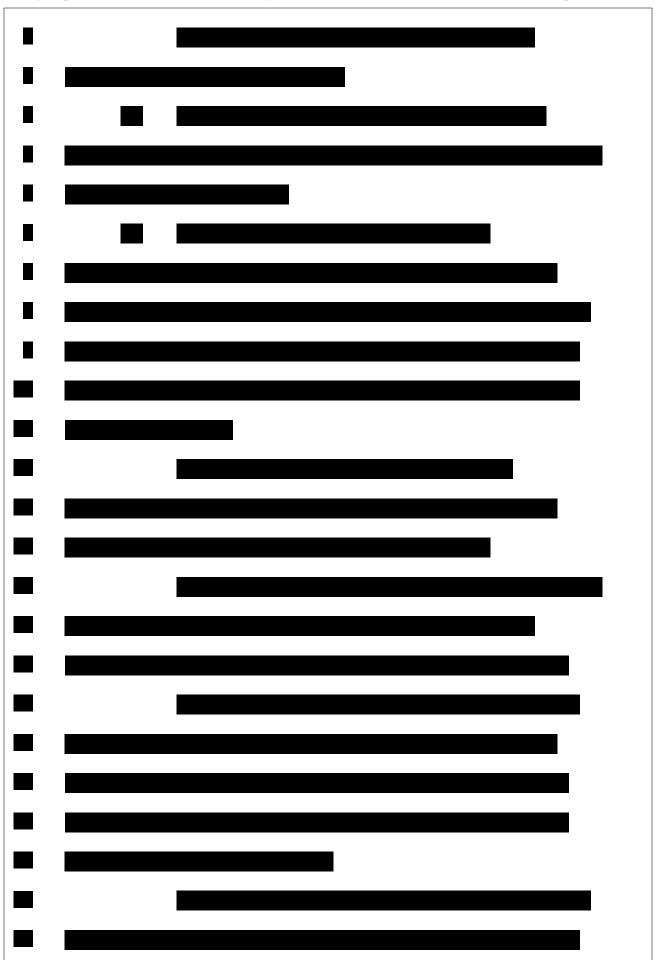
- 1 enforcement officer and as a licensed
- 2 pharmacist, I believe that CVS 219's and CVS
- 3 5195's DEA registration to handle and distribute
- 4 any type of controlled substance poses an
- 5 imminent danger to the public health and
- 6 safety."
- 7 Did I read that correctly?
- A. Yes, you read it correctly.
- 9 Q. Were you aware as president of Holiday
- 10 CVS at this time that the DEA had determined
- that a suspension order should be issued because
- these two CVS stores posed an imminent danger to
- public health and safety?
- MR. DELINSKY: Object to form.
- 15 A. I was not involved in this whole
- 16 situation, and we're kind of picking and
- 17 choosing paragraphs in a very long document, so
- 18 that is what it says here.
- 19 BY MR. ELSNER:
- Q. And you were not made aware of that as
- the president of Holiday CVS, the president of
- 22 these two stores?
- MR. DELINSKY: Object to form.
- A. I was made aware of it because I'm an

- 1 attorney in the legal department, but not due to
- 2 my role as president of Holiday.
- MR. ELSNER: Okay. I'm going to mark
- 4 this next document as the next exhibit, which is
- 5 MR 68, and it's Exhibit 14 to the deposition.
- 6 (Whereupon, CVS-Moffatt-14 was marked
- 7 for identification.)
- 8 BY MR. ELSNER:
- 9 Q. This is CVS-60796 through 60804. This
- is a settlement agreement, is it not, between
- 11 CVS Health and the -- and its subsidiaries and
- the DEA related to the DEA's investigation of
- stores 219 and 5195 in Sanford, Florida,
- 14 correct?
- 15 A. Yes, that appears to be correct.
- Q. And it was the DEA's position, the US
- government's position that CVS had failed in its
- 18 responsibilities under the Controlled Substances
- 19 Act, correct?
- MR. DELINSKY: Object to form.
- 21 A. I was not involved in this settlement
- agreement, so I mean, I'd have to go through the
- whole thing to agree with your characterization
- of what's in here.

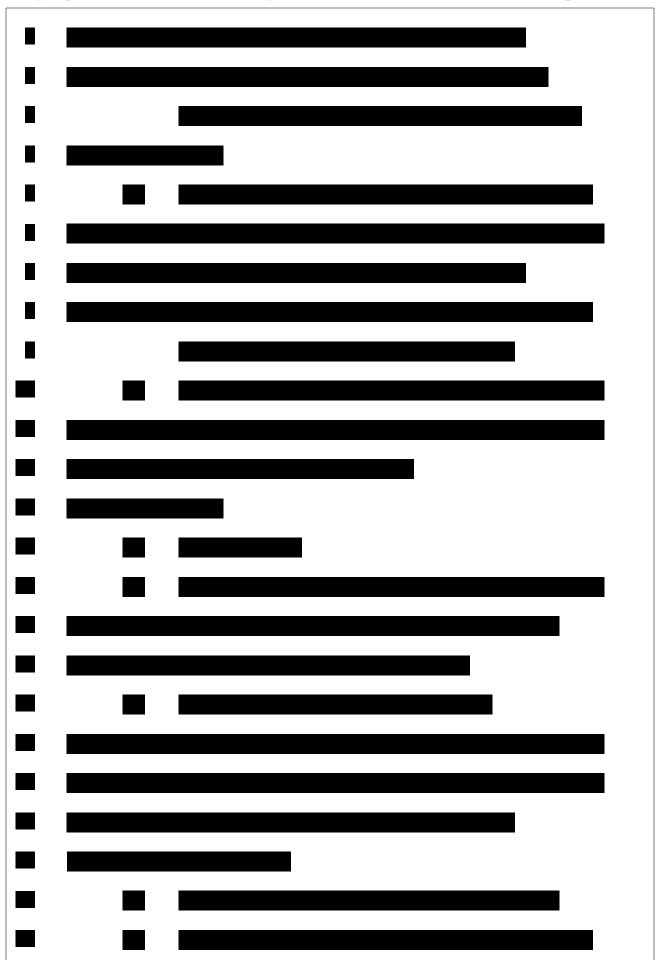
- 1 BY MR. ELSNER:
- Q. Well, if we turn to Page 3 of the
- 3 settlement agreement, under paragraph I, it
- 4 reads the "DEA revoked the registrations issued
- 5 to CVS stores 219 and 5195 in an order published
- on October 12, 2012" in the Federal Register.
- 7 The "DEA revoked the registrations of the DEA
- 8 stores...based, among other things, on their
- 9 failure to fulfill their corresponding
- 10 responsibilities under 21 CFR 1306.04," which is
- 11 the Controlled Substances Act.
- 12 Are you aware of that?
- 13 A. I was not involved in putting this
- 14 together or anything like that. I was generally
- aware of the actions taken against the two
- 16 stores.
- Q. Okay. And were you aware in
- Paragraph 12 that CVS -- on Page 3, that "CVS"
- 19 acknowledges that certain CVS/pharmacy retail
- stores did dispense certain controlled
- 21 substances in a manner not fully consistent with
- their compliance obligations under the CSA and
- its implementing regulations"?
- A. I see that. It's paragraph K.

1 Q. Yes. 2 Α. Yes. So, in fact, CVS agreed, did it not, 3 Q. 4 that there were certain violations of the 5 Controlled Substances Act in these two stores in 6 Florida? 7 MR. DELINSKY: Object to form. 8 It says CVS acknowledges that certain Α. stores dispensed controlled substances in a 9 10 manner not fully consistent with their compliance obligations under the CSA and its 11 12 implementing regulations. 13 BY MR. ELSNER: 14 0. Right. 15 Α. That's what it says, yes.

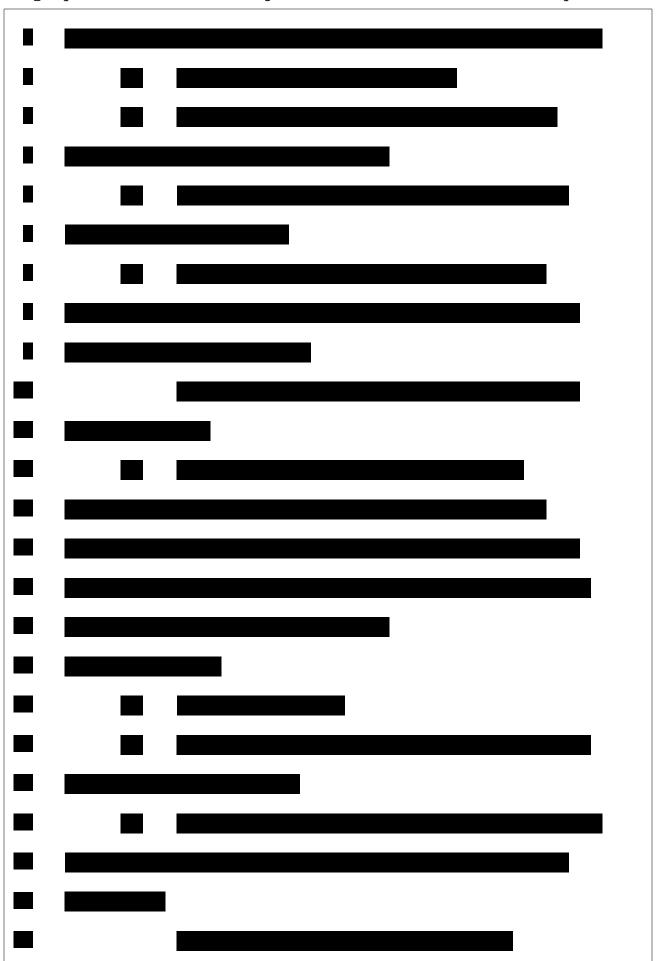
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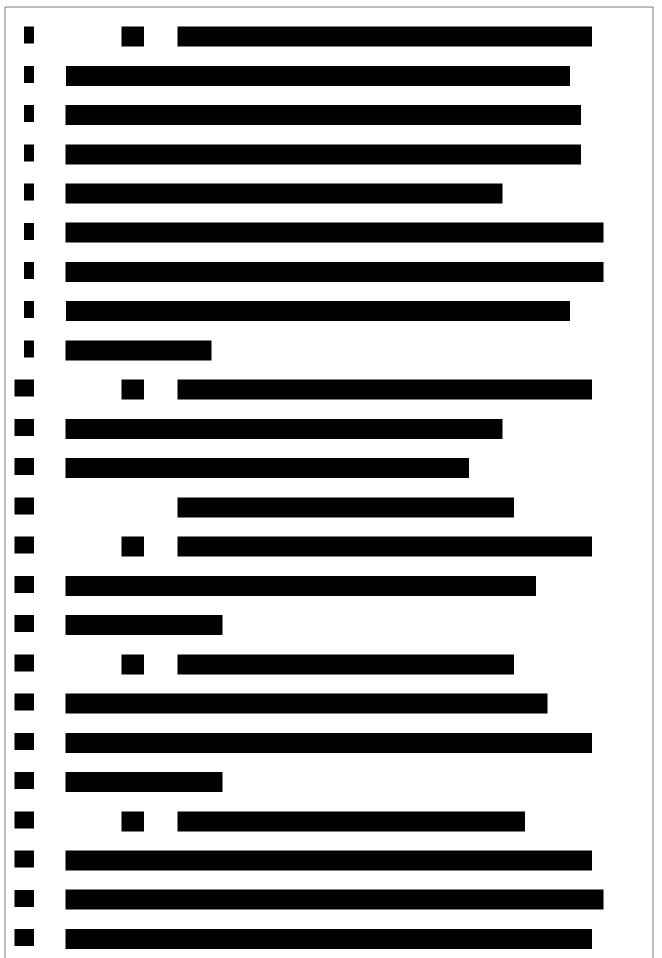
Case: 1:17-md-02804-DAP Doc#: 2173-44 Filed: 08/12/19 179 of 274 PageID #: 314688 Highly Confidential Ey Review



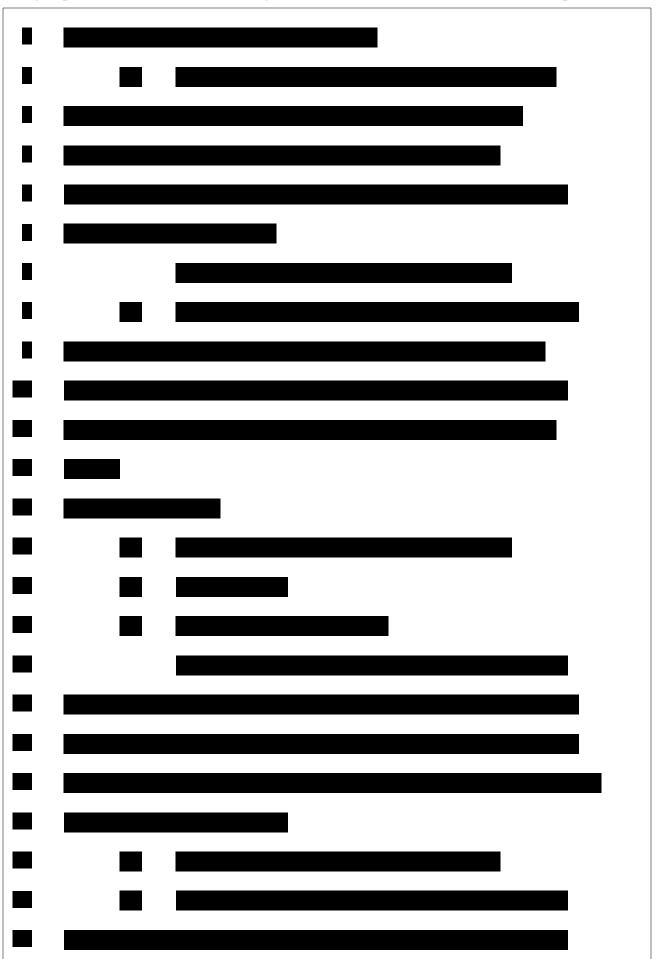
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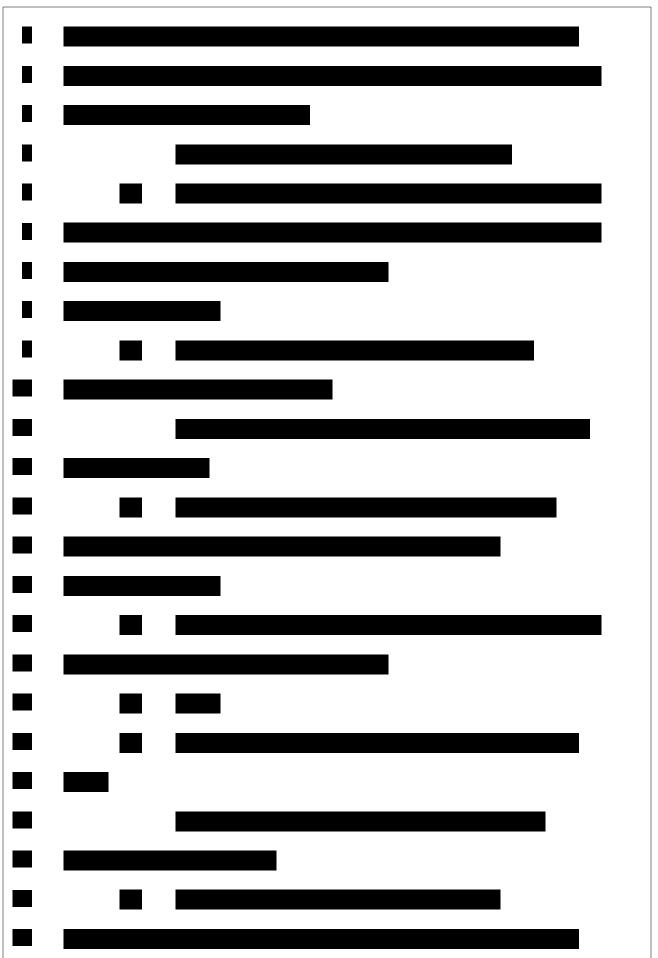
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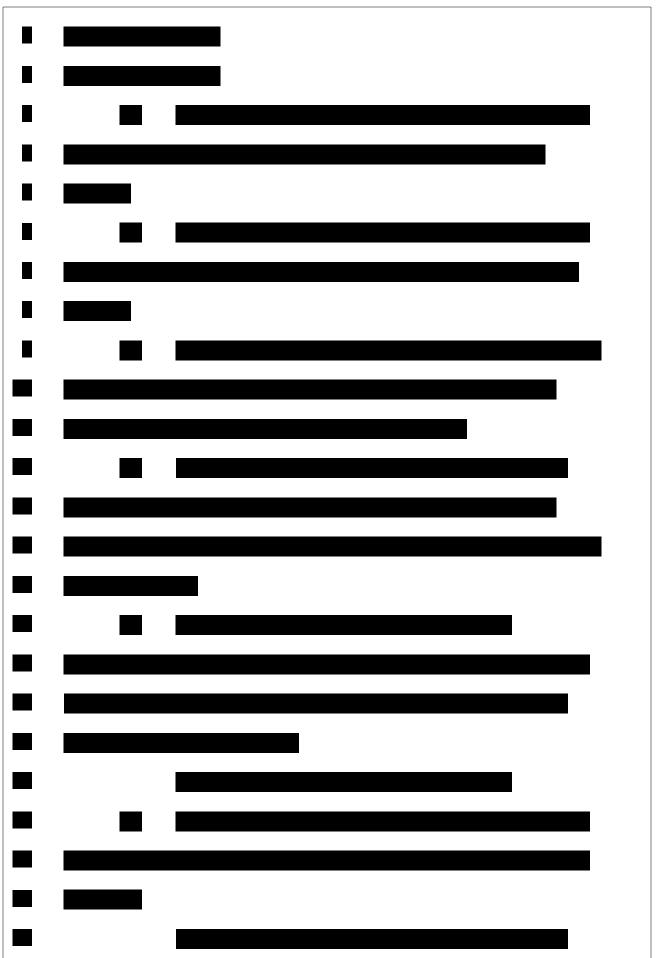
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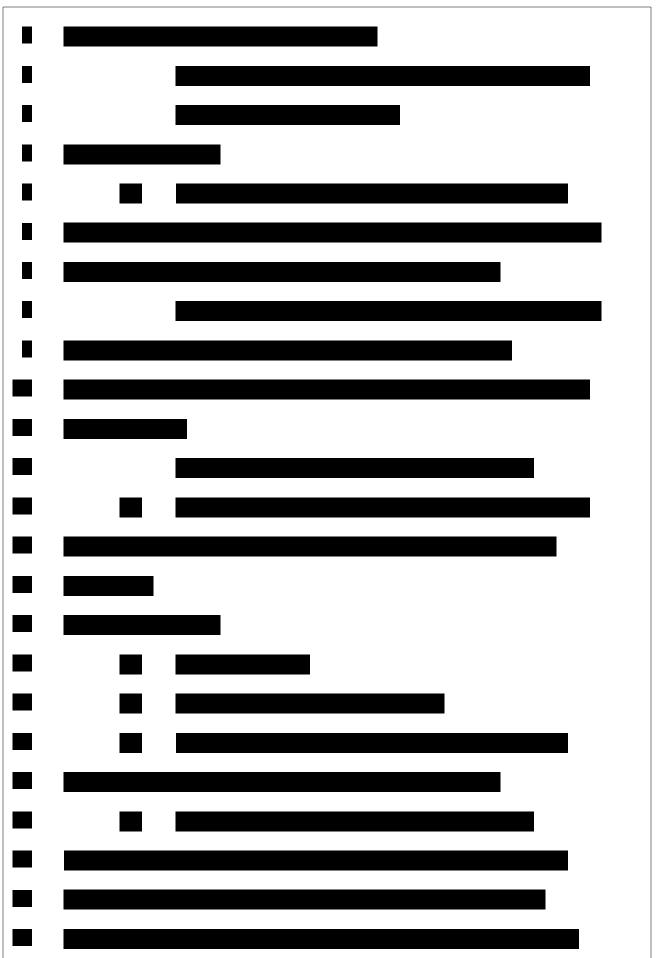
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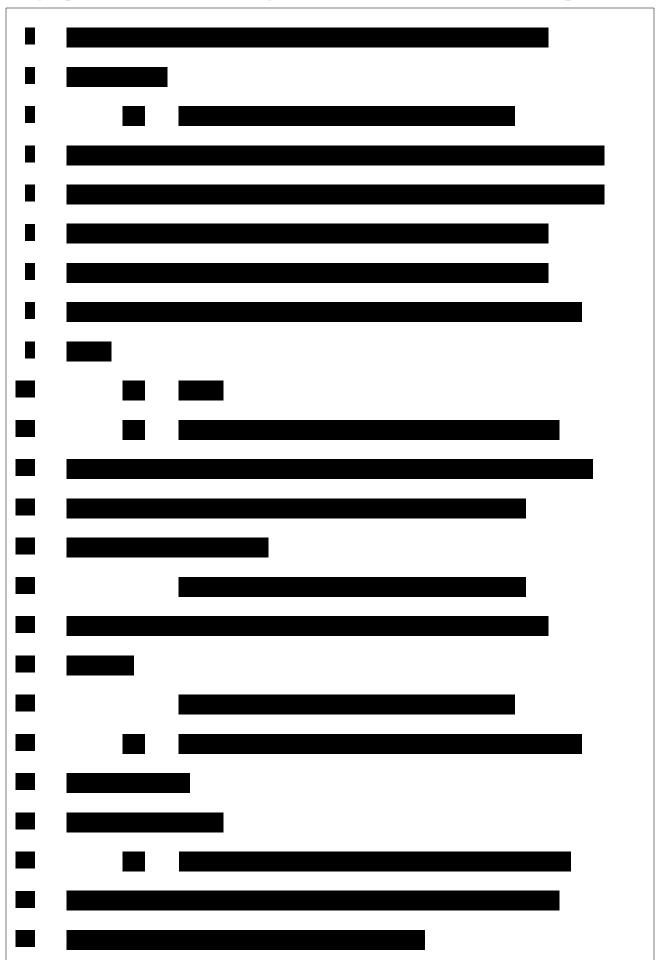
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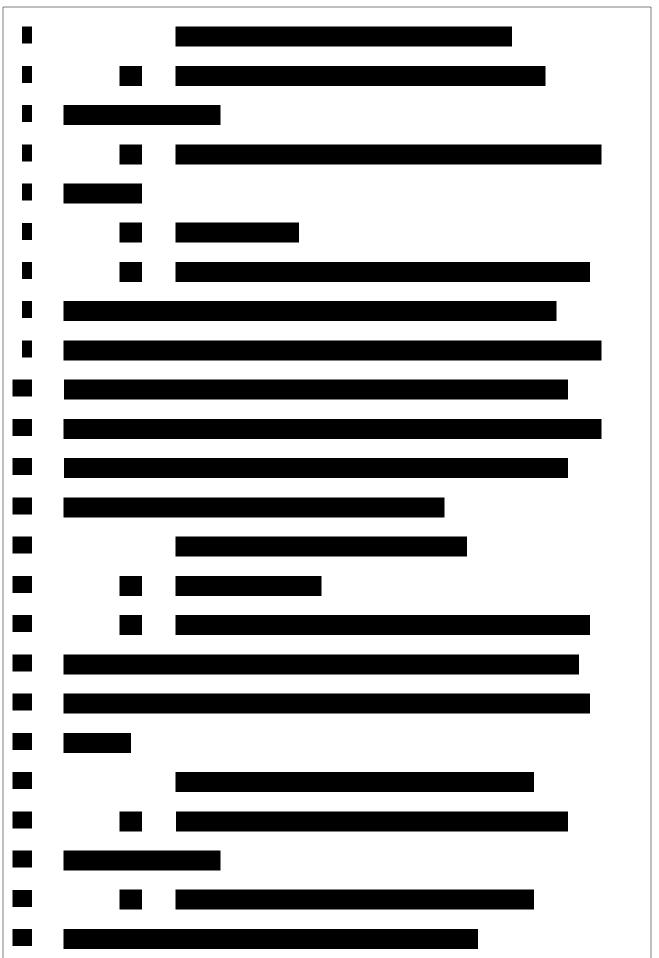
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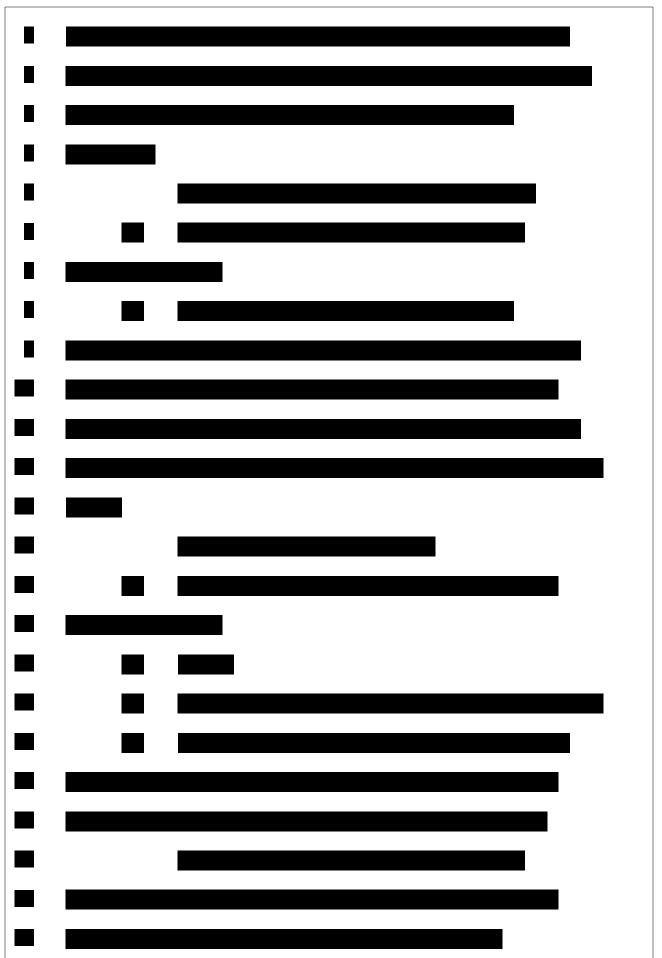
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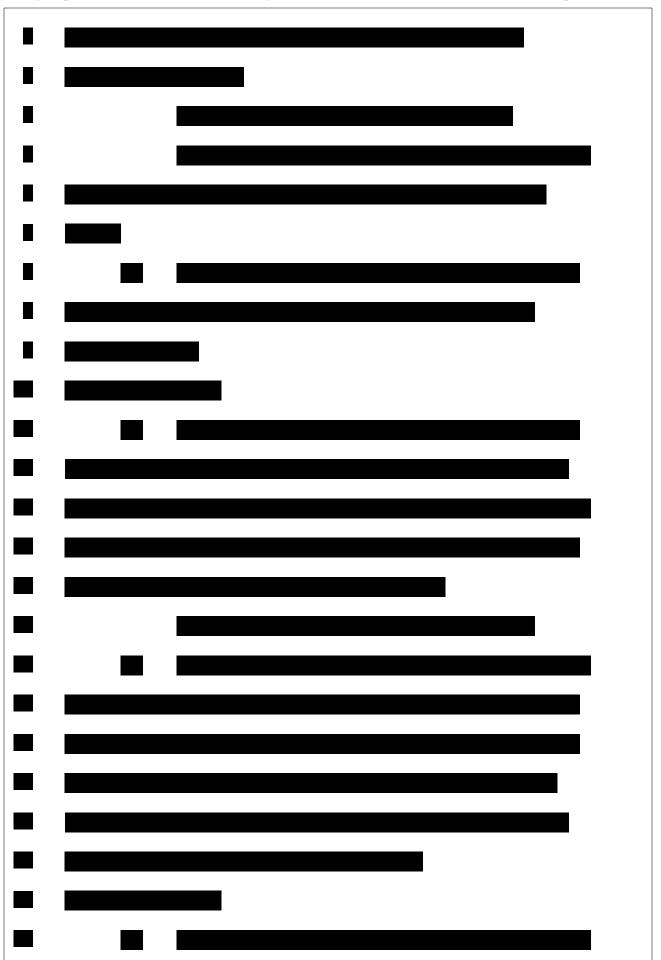
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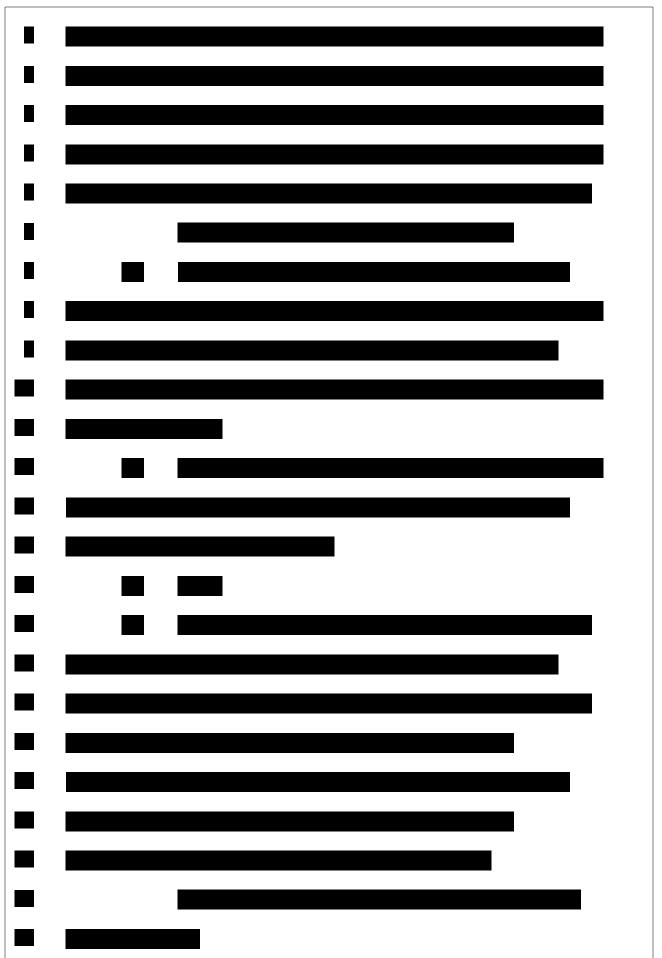
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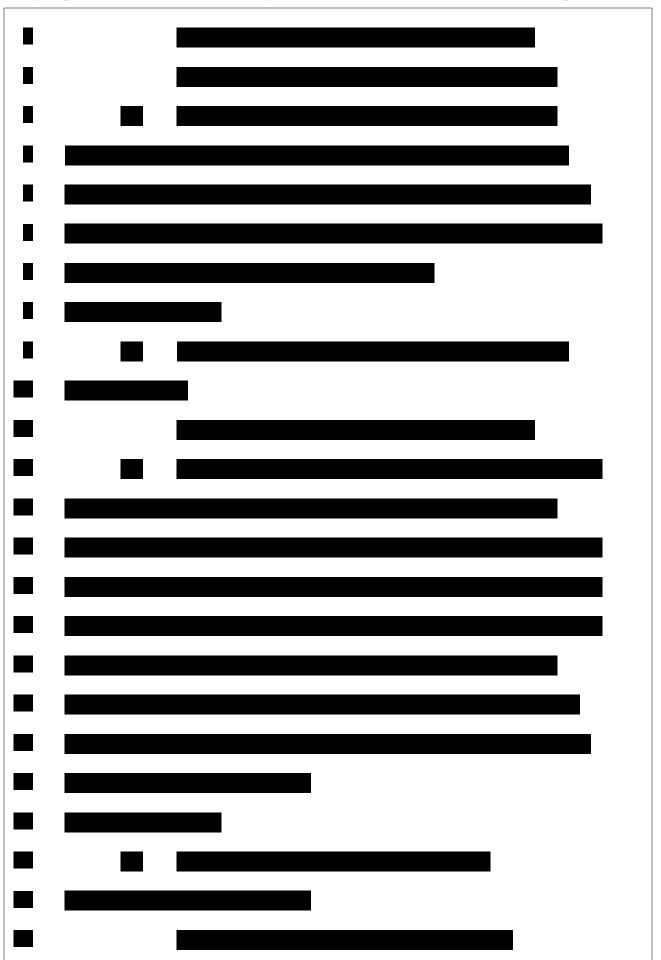
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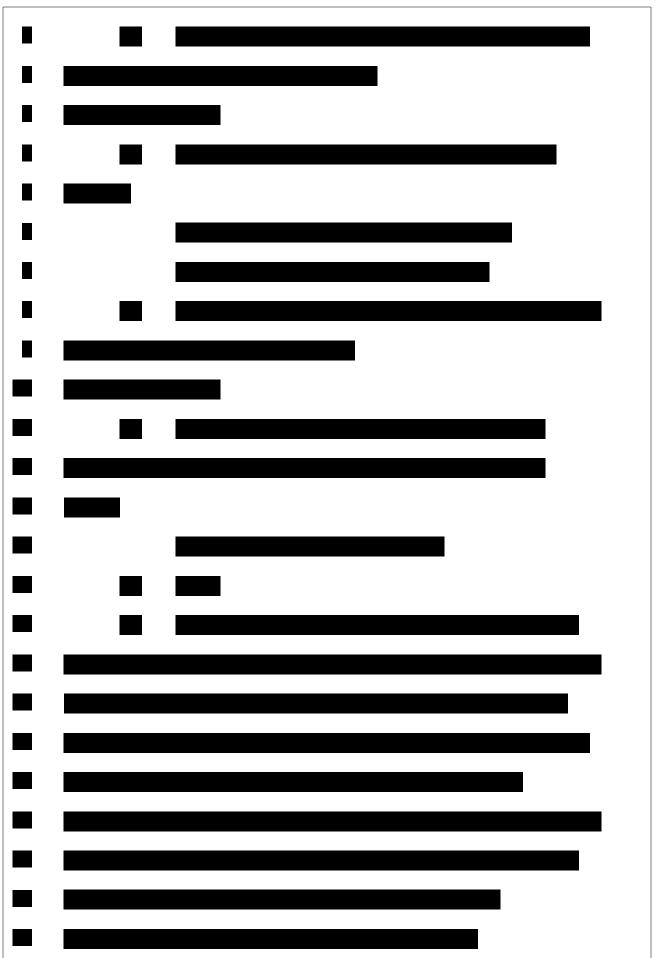
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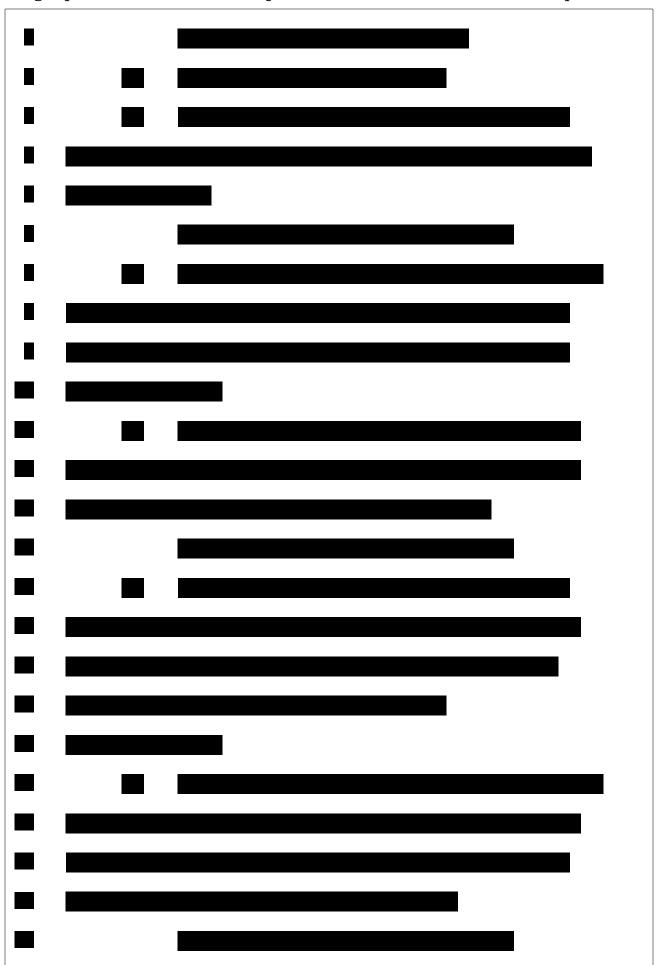
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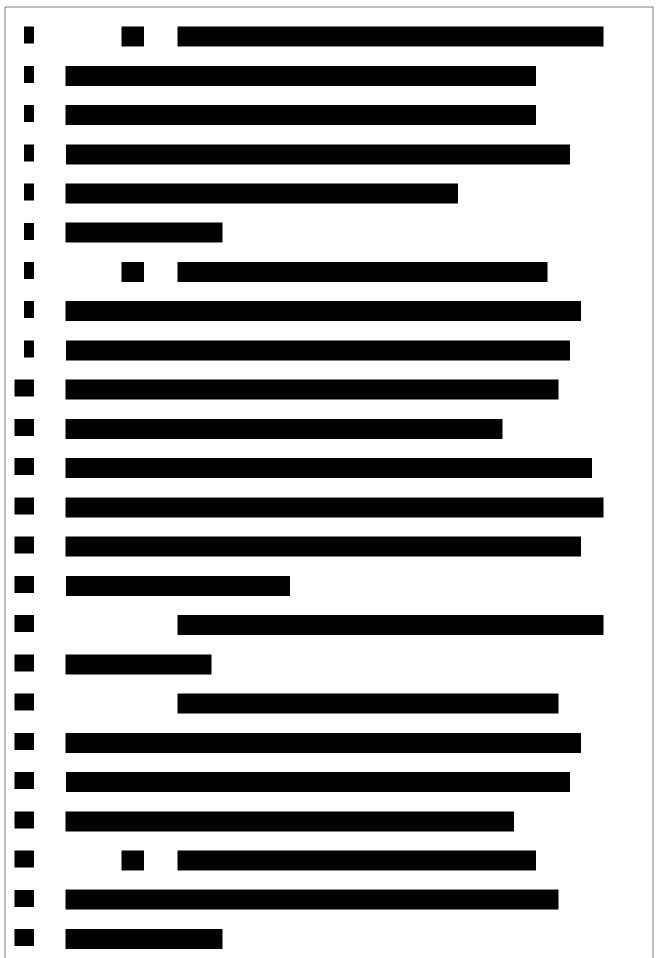
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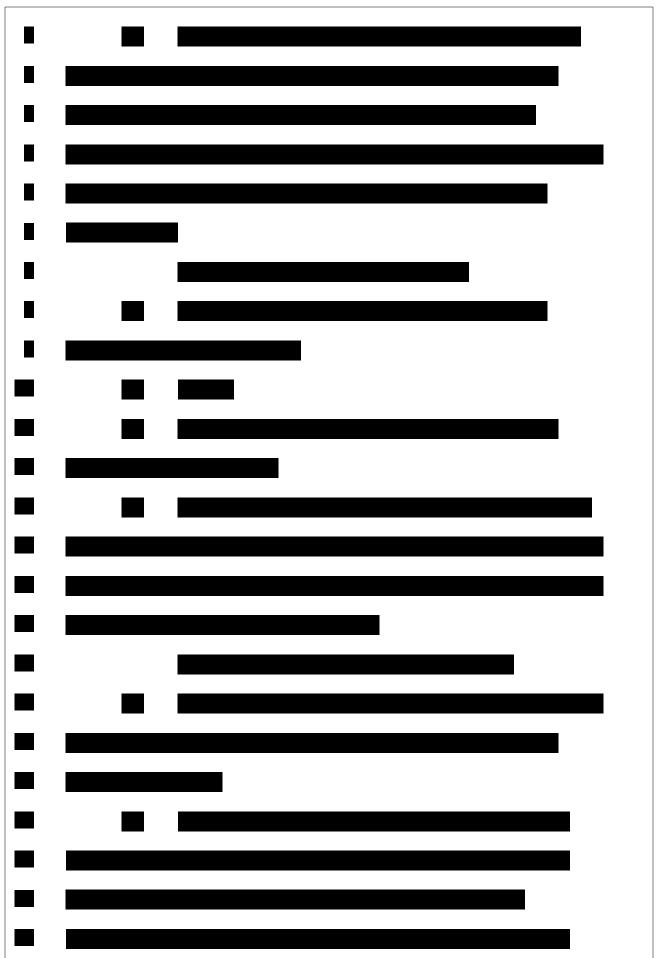
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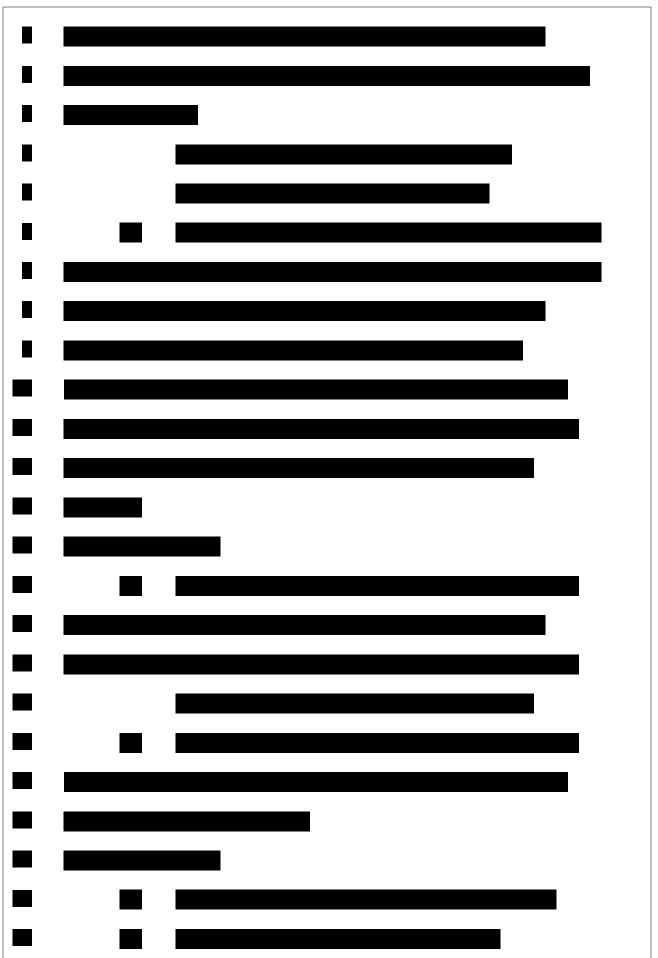
Case: 1:17-md-02804-DAP Doc#: 2173-44 Filed: 08/12/19 194 of 274 PageID #: 314703 Highly Confidential Expression



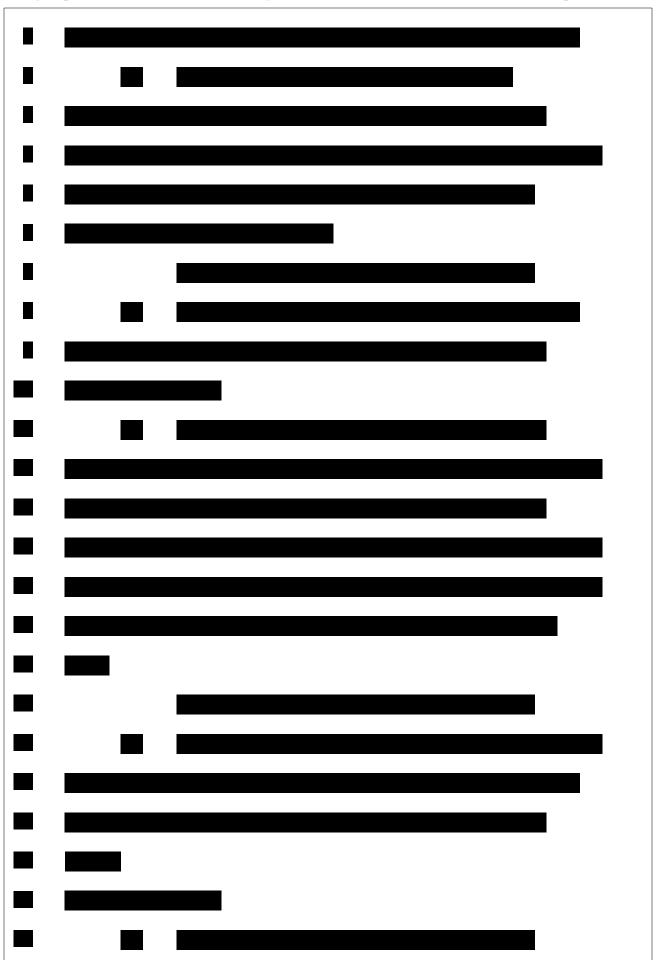
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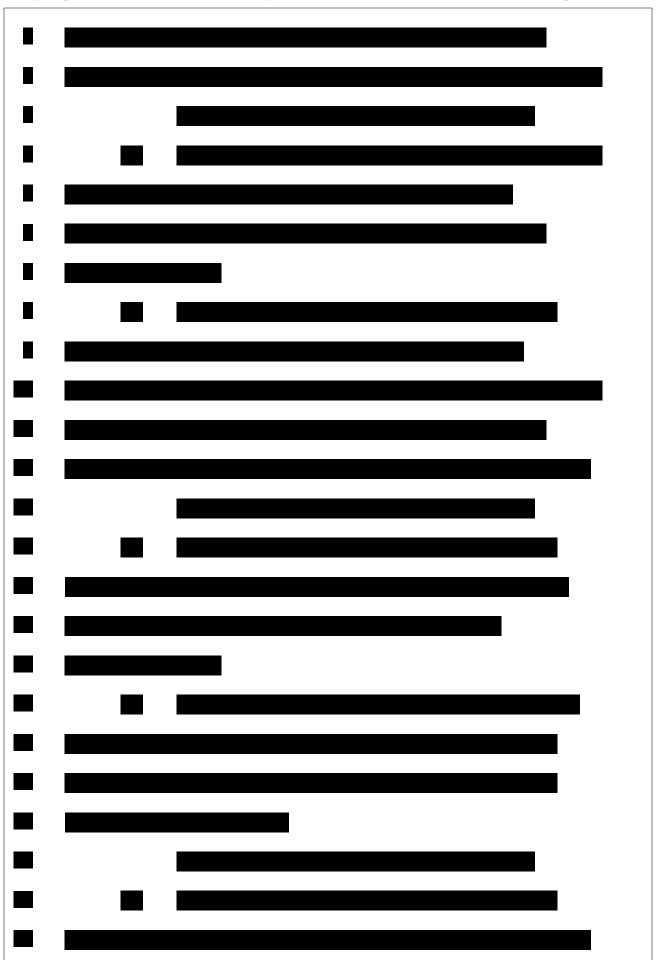
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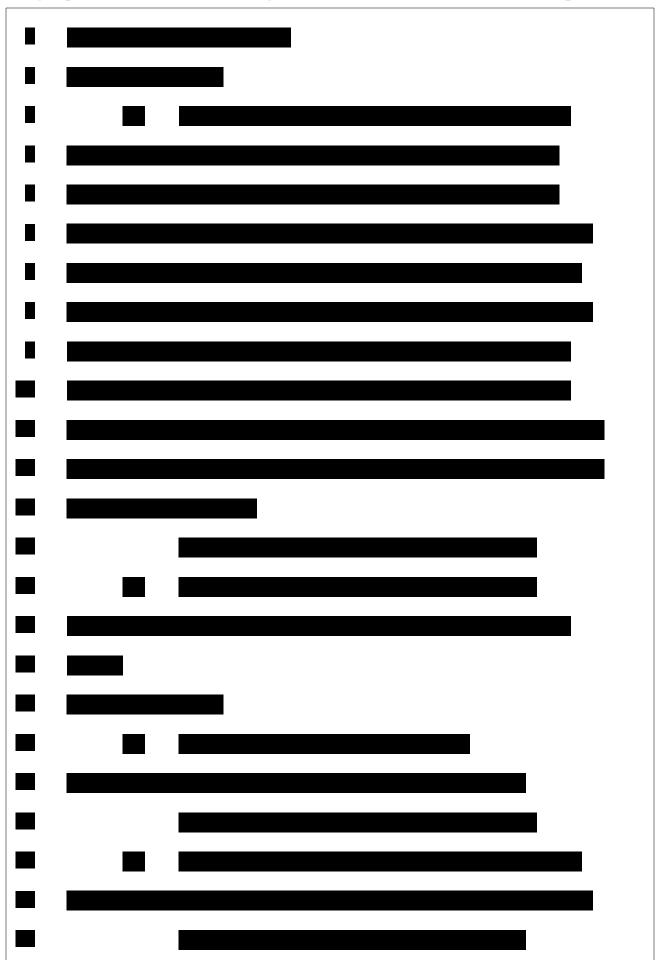
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6 MR. ELSNER: I'm going to mark this 7 next exhibit, which is Exhibit 16. This is MR 8 70. 9 (Whereupon, CVS-Moffatt-16 was marked 10 for identification.) 11 BY MR. ELSNER: 12 Were you aware the DEA was conducting 0. an investigation of CVS pharmacies in Maryland? 13 14 Others were handling this more 15 directly. I was generally aware based on my 16 role as an attorney. 17 The investigation concerned potential 0. 18 violations of the Controlled Substances Act, and 19 in particular it related to CVS's obligations 20 with respect to corresponding responsibility between the pharmacist and the physician. Were 21 22 you aware of that? 23 MR. DELINSKY: Object to form. 24 Others were handling this more Α.

- directly. I was generally aware of that based
- on my role as an attorney.
- 3 BY MR. ELSNER:
- Q. If you turn to -- what I've placed
- 5 before you is actually a settlement agreement
- 6 which was entered into by CVS Pharmacy, Inc.
- 7 with the DEA related to the DEA's investigation
- 8 in Maryland, is that right?
- 9 A. Yes, that's what this appears to be.
- 10 Q. Okay. And if you turn to Page 2 of
- 11 the settlement agreement under paragraph F, it
- 12 reads that "The United States contends that CVS
- 13 failed to fulfill its corresponding
- 14 responsibilities under 21 CFR 1306.04," which is
- the Controlled Substances Act, and "is subject
- 16 to civil penalties."
- Did I read that correctly?
- 18 A. You did read that correctly.
- Q. Okay. And in paragraph E it states
- 20 that "CVS acknowledges that it has a
- 21 corresponding responsibility to dispense only
- those prescriptions that have been issued for a
- legitimate medical purpose by an individual
- 24 practitioner acting in the usual course of

- 1 professional practice and that knowingly filling
- 2 a prescription not in the usual course of
- 3 professional treatment or in legitimate and
- 4 authorized research subjects CVS to penalties
- 5 under the CSA, " or the Controlled Substances
- 6 Act, correct?
- 7 A. Yes, you read that correctly.
- Q. Were you aware that CVS acknowledged
- 9 in paragraph G that certain CVS Pharmacy retail
- 10 stores in Maryland did dispense certain
- 11 controlled substances in a manner not fully
- consistent with their compliance obligations
- 13 under the CSA?
- 14 A. You read that portion of the paragraph
- 15 G correctly as well.
- Q. Were you aware that CVS had made that
- 17 acknowledgment in the settlement agreement?
- 18 A. I was not involved in putting this
- 19 settlement agreement together, and so I wouldn't
- have been involved in the wording here.
- Q. If you turn to Page 3, it states --
- Page 3, Paragraph 3 at the very bottom, it
- states that CVS will pay the United States a sum
- of \$8 million in settlement, is that correct?

- 1 A. Yes, that's what Paragraph 3 says.
- Q. Were you aware that CVS had entered
- 3 into a settlement with the DEA related to
- 4 violations of corresponding responsibilities of
- 5 its CVS pharmacies in Maryland for an amount of
- 6 \$8 million?
- 7 MR. DELINSKY: Object to form.
- 8 A. I wasn't involved in the whole
- 9 process, but that appears to be what this says.
- 10 It also says that it was done to avoid the
- delay, expense, and inconvenience and
- uncertainty of litigation. So it's not
- necessarily, you know, an admission, but...
- 14 BY MR. ELSNER:
- 15 Q. The DEA had reached certain findings,
- and you could have fought those findings in
- court, but rather than doing that you entered
- into a settlement in the amount of \$8 million,
- 19 is that right?
- MR. DELINSKY: Object to form.
- A. Again, there's another attorney, or
- other attorneys would have been responsible for
- making that sort of decision, and the reasons
- 24 behind it. I'm not involved in that process.

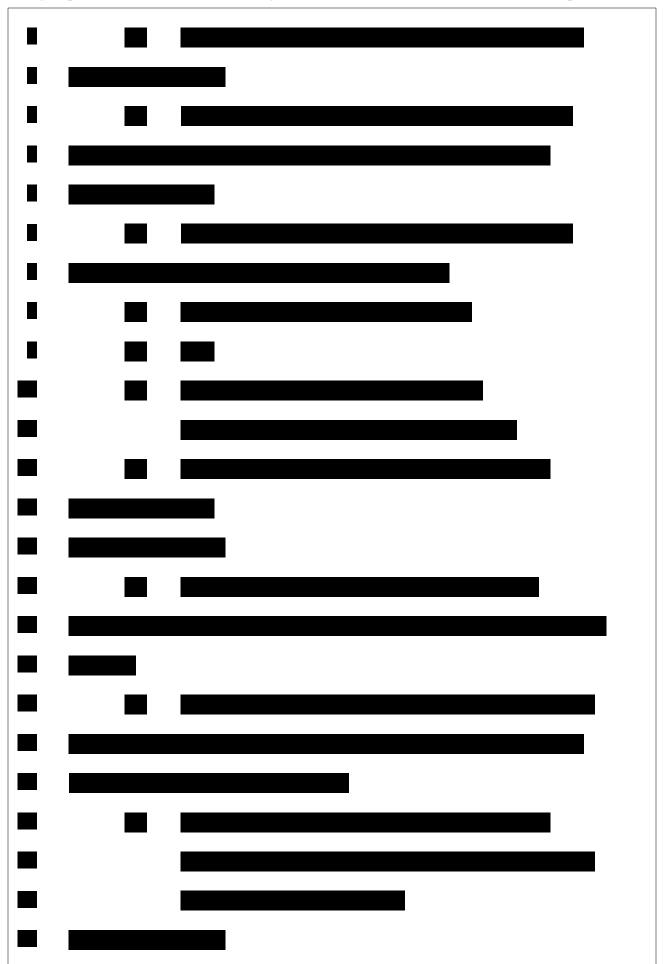
- 1 BY MR. ELSNER:
- Q. Okay. But CVS agreed to it and they
- 3 signed -- Betsy Ferguson on behalf of CVS
- 4 Pharmacy, Inc. executed the settlement agreement
- 5 in February of 2016, correct?
- 6 A. Yes.
- 7 MR. DELINSKY: Could we take a quick
- 8 five minutes?
- 9 MR. ELSNER: Sure. Absolutely.
- THE VIDEOGRAPHER: We're going off the
- 11 record at 12:16 p.m.
- 12 (Whereupon, a recess was taken.)
- THE VIDEOGRAPHER: We're back on the
- 14 record at 12:24 p.m.
- 15 BY MR. ELSNER:
- Q. Mr. Moffatt, were you a secretary or
- 17 president of any of the pharmacies in Maryland
- that were subject of the DEA investigation and
- 19 CVS settlement with the DEA?
- MR. DELINSKY: Object to form.
- 21 A. I was president of the entity that
- operated those pharmacies, yes.
- 23 BY MR. ELSNER:
- Q. Were you aware that the DEA also

- 1 conducted an investigation of certain CVS
- 2 pharmacies in Alabama?
- MR. DELINSKY: Object to form.
- 4 A. Others at CVS are responsible for all
- of those sort of matters, so I don't recall
- 6 specifically information about Alabama.
- 7 BY MR. ELSNER:
- Q. Let me show you Moffatt Exhibit 17,
- 9 which is a settlement agreement between CVS and
- 10 the DEA related to entities in Alabama.
- 11 (Whereupon, CVS-Moffatt-17 was marked
- for identification.)
- 13 BY MR. ELSNER:
- 0. If I could -- the DEA was
- 15 investigating certain pharmacies in Alabama,
- 16 particularly in Calera, Alabama, for certain
- 17 recordkeeping and reporting violations of
- 18 controlled substances, regulations in place to
- 19 guard against theft and diversion. This is
- 20 paragraph F on Page 2. Do you see where I'm at?
- 21 A. Yes.
- MR. DELINSKY: Objection.
- A. I see paragraph F.
- 24 BY MR. ELSNER:

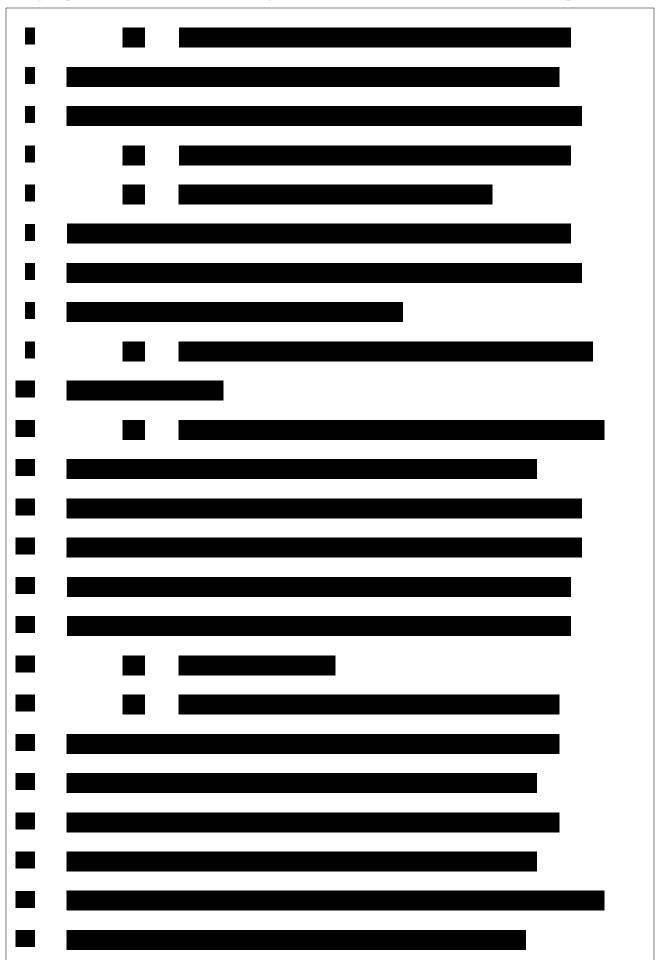
- Q. And then in paragraph G on Page 2 that
- 2 as a result of the DEA's investigation and its
- 3 inspection of this CVS store in Calera, Alabama,
- 4 that the United States contends that on or
- 5 before the effective date of the agreement CVS
- 6 Calera violated the CSA, the Controlled
- 7 Substances Act, and then it lists three
- 8 violations that the DEA believed exists, is that
- 9 correct?
- MR. DELINSKY: Object to form.
- 11 A. I was not involved in the preparation
- of this, but that is what Paragraph G says.
- 13 BY MR. ELSNER:
- 0. On Page 3 of the agreement under
- 15 "Terms and Conditions," CVS agreed to pay a
- 16 \$1 million sum in settlement of this contention
- 17 and these alleged violations, is that right?
- MR. DELINSKY: Object to form.
- 19 A. I wasn't involved in this settlement
- or anything, but it appears that that's what
- 21 Paragraph 1 on Page 3 says.
- 22 BY MR. ELSNER:
- Q. Okay. And on Page 8 of the agreement,
- 24 CVS Pharmacy, Inc. agreed to the settlement

terms in July of 2018, is that right? 1 2 What page were you on? Α. 3 Q. Page 8, the very last page of the 4 agreement. Yes, yes, signed in July. 5 Α. Signed by Betsy Ferguson again, is 6 Ο. 7 that right? 8 And John Gilbert, our outside Α. 9 attorney. 10 Q. Okay. Who is at Hyman, Phelps. 11 Α.

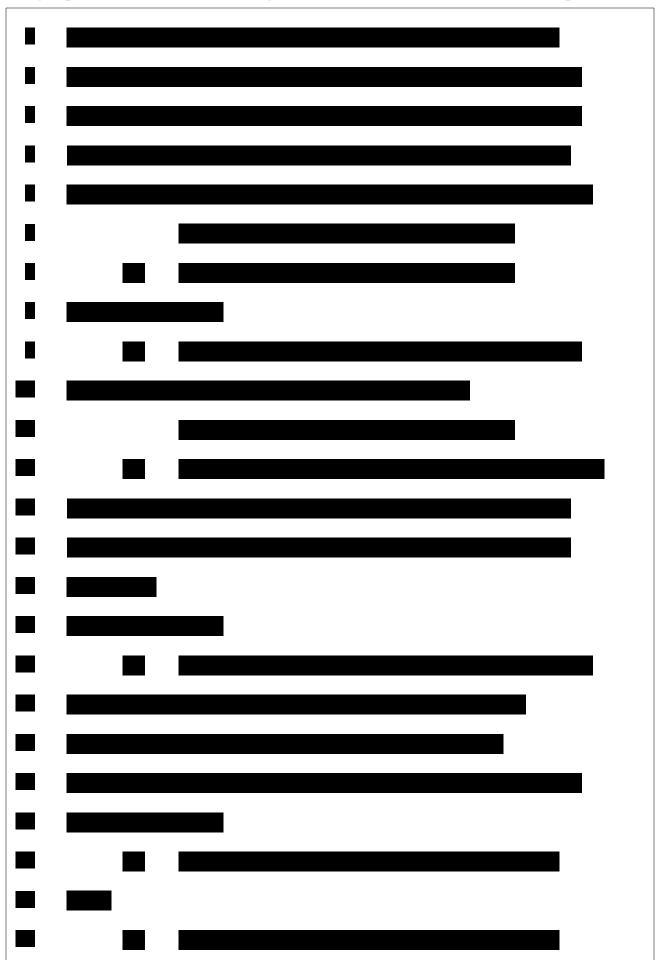
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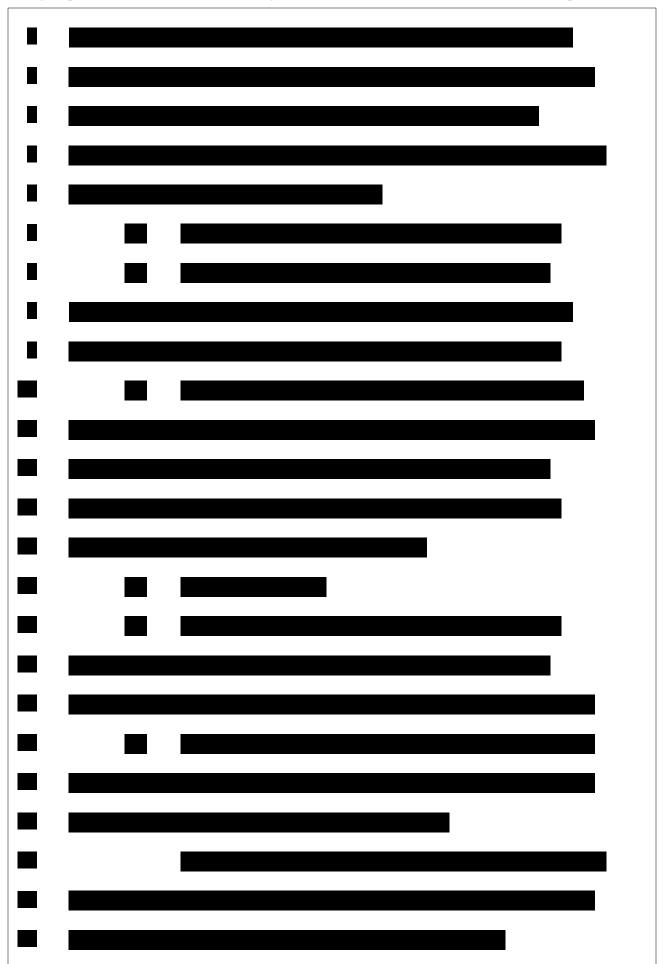
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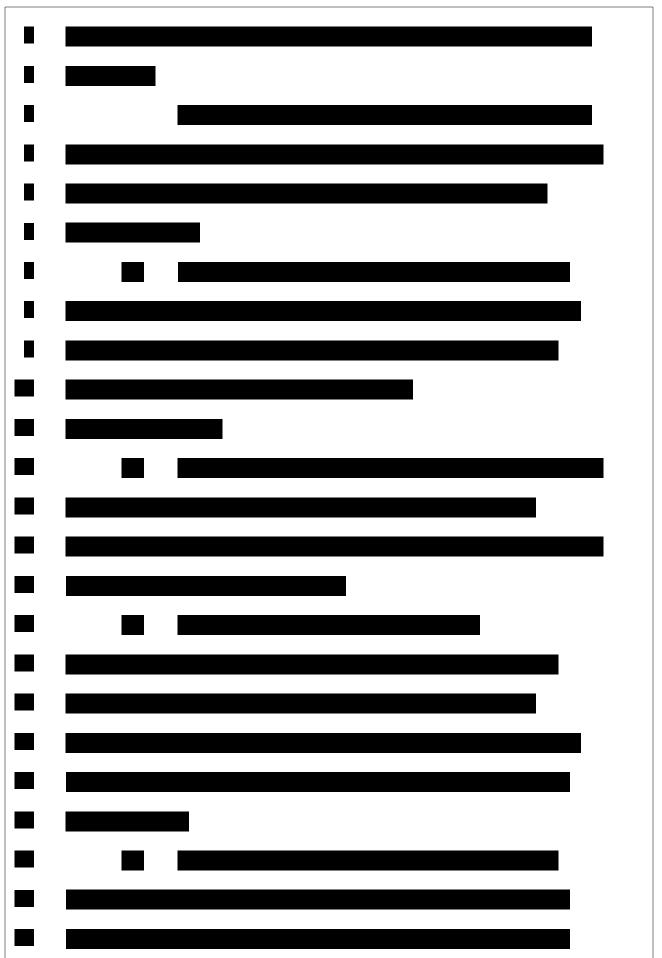
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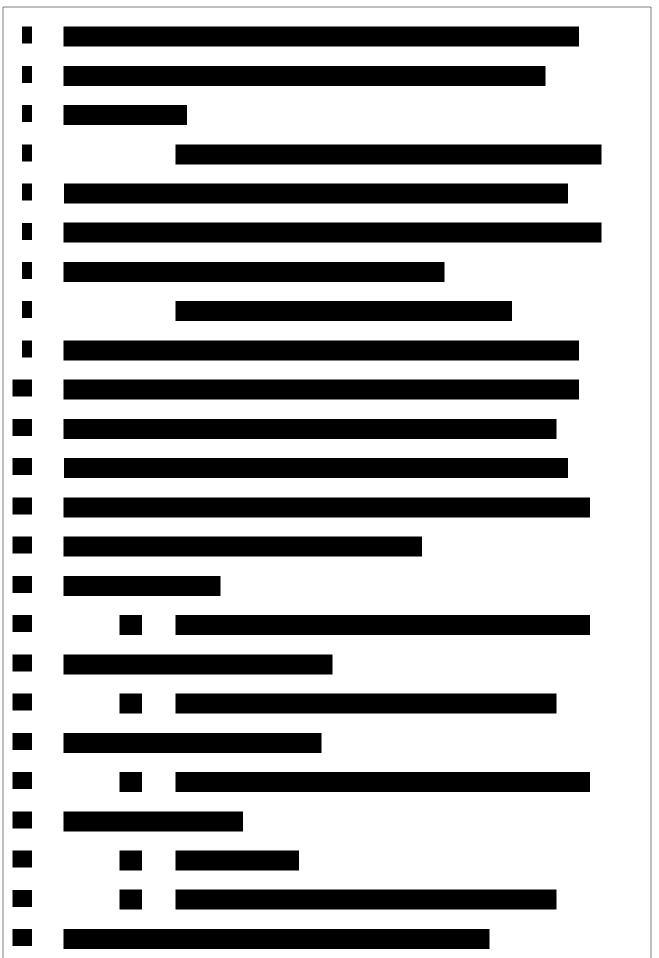
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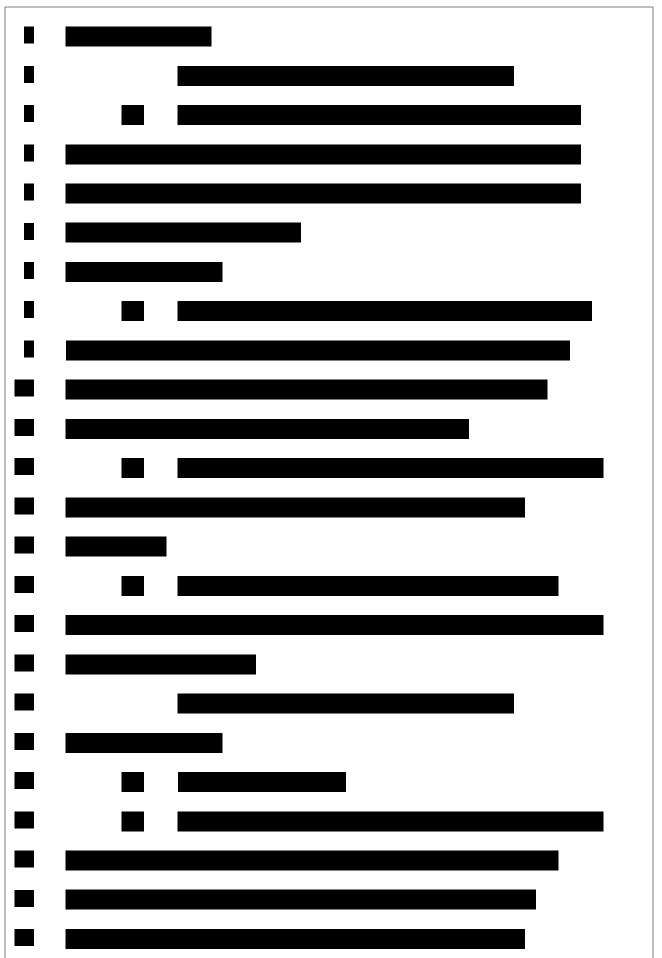
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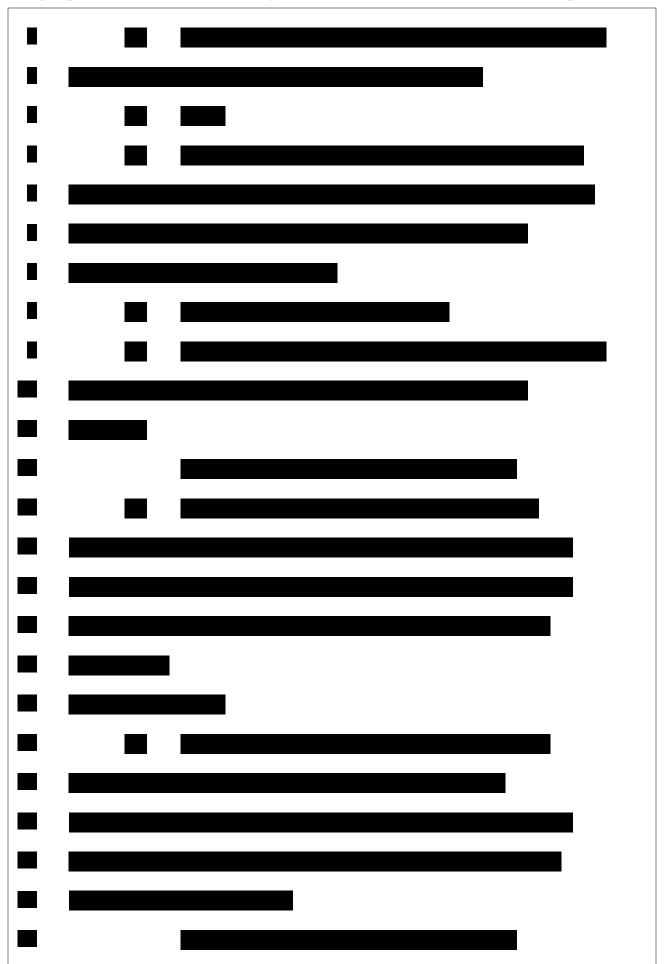
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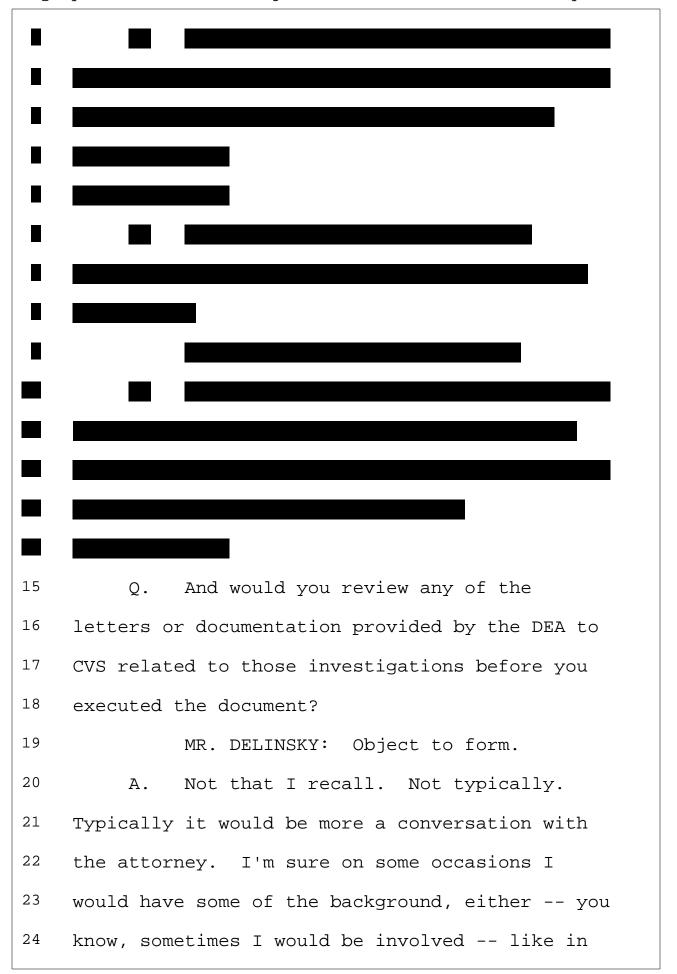


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- 1 this case I would be in providing a declaration
- 2 earlier in the matter, so I might have been
- 3 involved then. For the signing of this
- 4 particular settlement agreement, I think it
- 5 would have just been a conversation with the
- 6 attorneys.
- 7 Q. Was this approved by anyone at CVS
- 8 Pharmacy?
- 9 A. It was signed by Josh Flum, who was
- 10 senior vice president. I think at the time he
- 11 was pharmacy operations. But again, it would be
- one attorney or group of attorneys. I'm not
- 13 sure who handled it. They would have been
- 14 handing the matter and would have brought it to
- both me and Josh to sign.
- Q. And who would those attorneys be at
- 17 CVS?
- 18 A. It varies, but Betsy Ferguson was head
- of the area, so it would be her and other
- 20 attorneys in her group.
- Q. But in settlement of the Oklahoma
- investigation, CVS agreed to pay \$11 million,
- and you executed that settlement agreement on
- behalf of Oklahoma CVS, is that right?

- 1 MR. DELINSKY: Object to form.
- 2 A. That's correct. That's what
- Paragraph 15 says.
- 4 BY MR. ELSNER:
- 5 Q. There was also an investigation by the
- 6 DEA of CVS stores in Rhode Island, is that
- 7 right?
- MR. DELINSKY: Object to form.
- 9 A. Others are involved in the various
- 10 investigations. I'm generally aware that there
- 11 was one in Rhode Island.
- 12 BY MR. ELSNER:
- Q. Okay. This is MR 225. This is
- 14 Exhibit 19, Mr. Moffatt.
- 15 (Whereupon, CVS-Moffatt-19 was marked
- for identification.)
- 17 BY MR. ELSNER:
- 18 Q. If you turn to Page 3 of 7 of the
- 19 settlement agreement, paragraph I, it states,
- does it not, that "Between October 18, 2013 and
- 21 March 2, 2015, the DEA Providence Resident
- 22 Office conducted an investigation into CVS'
- dispensing of prescriptions from Rhode Island
- 24 CVS/pharmacy retail stores." Is that right?

- 1 A. Yes, that's what paragraph I says.
- Q. Did you have a role with respect to
- 3 CVS stores and pharmacies -- were you president
- 4 or secretary or treasurer of that entity?
- 5 MR. DELINSKY: Object to form.
- 6 A. I would have been president of the
- 7 Rhode Island entity, yes.
- 8 BY MR. ELSNER:
- 9 Q. And what is that entity called?
- 10 A. I have to look it up, but something
- along the lines of Rhode Island CVS Pharmacy,
- 12 LLC.
- Q. Do you know the name sitting here
- 14 today?
- 15 A. I don't. We have separate store
- 16 entities in each state, sometimes multiple, so I
- don't know exactly the name of the entity.
- 18 Sometimes it's just Rhode Island CVS, sometimes
- 19 it's CVS Rhode Island, it varies a little bit.
- Q. In paragraph J it states that "The
- 21 United States contends that it has certain civil
- 22 and administrative claims under the Act," this
- is the Controlled Substances Act, and "it's
- implementing regulations based on CVS' conduct

- in Rhode Island CVS/pharmacy retail stores
- between the 3rd of March, 2010 and the date of
- 3 this agreement, " and then it goes on to list
- 4 certain conduct which includes "Filling
- 5 prescriptions with invalid prescriber DEA
- 6 numbers, or under circumstances where the
- 7 pharmacist filling the prescription knew or had
- 8 reason to know that the prescription in question
- 9 was invalid or unauthorized."
- 10 Did I read that correctly?
- 11 A. That's what Paragraph 1 says.
- 12 Q. In Paragraph 2 for "Filling
- 13 prescriptions for Schedule III controlled
- 14 substances written by psychiatric nurse
- 15 practitioners who were not authorized under
- 16 state law or by the terms of their DEA
- 17 registration to issue such prescriptions," is
- 18 that right?
- 19 A. That's what Paragraph 2 says.
- Q. Okay. And third that "Entering,
- 21 creating, or maintaining CVS dispensing records,
- including prescription vial labels, in which the
- DEA registration numbers of non-prescribing
- 24 practitioners, including non-prescribing

- 1 practitioners who were not really authorized to
- 2 prescribe the substances dispensed, were
- 3 substituted for the DEA registration numbers of
- 4 prescribing practitioners, in violation of the
- 5 Controlled Substances Act, " is that right?
- 6 A. That's what Paragraph 3 says, yes.
- 7 Q. Were you aware that the DEA had made
- 8 such contentions with respect to CVS stores in
- 9 Rhode Island based on your role as the president
- of the CVS entity in Rhode Island covering those
- 11 stores?
- MR. DELINSKY: Object to form.
- 13 A. No. Others at CVS would have been
- 14 responsible for this sort of investigation, and
- 15 for the settlement, so I was not involved in
- 16 preparing this document or in the investigation.
- 17 BY MR. ELSNER:
- 18 Q. Okay. And CVS agreed to pay in
- 19 settlement of these claims \$450,000 to the
- 20 United States Government, is that right?
- 21 A. That's what Paragraph 1 on Page 4
- 22 says.
- Q. Were you aware of that as the
- 24 president of the CVS Rhode Island entity

- 1 concerning these stores?
- 2 MR. DELINSKY: Object to form.
- 3 A. I was not involved in preparing any of
- 4 this or in the amount that was agreed upon. To
- 5 the extent I knew about it, it was because of my
- for role as an attorney as opposed to because I'm
- 7 president of the store entity.
- 8 BY MR. ELSNER:
- 9 Q. They wouldn't have informed you as
- 10 president of the store entity that a settlement
- 11 had been reached?
- MR. DELINSKY: Object to form.
- 13 A. They informed me because I'm an
- 14 attorney. I'm also president of the entity. I
- don't know if they would have informed somebody
- 16 else if somebody else was the president, but
- they did inform me.
- 18 BY MR. ELSNER:
- 19 Q. Okay. And Betsy Ferguson executed
- this document on August 5, 2015, Page 7 of 7?
- 21 A. Yes, she did. August 5th.
- Q. Were you aware that the DEA had
- 23 conducted investigations of CVS pharmacies in
- 24 California, in Nassau and Suffolk County, New

- 1 York, and also in -- related to the theft of
- 2 controlled substances and the failure to report
- 3 those thefts to the DEA promptly?
- 4 MR. DELINSKY: Object to form.
- 5 A. Others at CVS are involved in all of
- 6 the government investigations, so I may have
- 7 heard of those matters through my role as an
- 8 attorney, but other people were primarily
- 9 responsible for that sort of investigation and
- 10 the circumstances behind them.
- 11 BY MR. ELSNER:
- 12 Q. Okay. This is Motley Rice 226, which
- is Exhibit 20 to your deposition.
- 14 (Whereupon, CVS-Moffatt-20 was marked
- for identification.)
- 16 BY MR. ELSNER:
- 17 Q. This is the settlement agreement
- 18 between CVS and the DEA related to its
- 19 investigation in California.
- If you turn to paragraph F, which is
- on Page 2 of the agreement, describes that the
- DEA Sacramento field office, and U.S. Attorney's
- Office for the Eastern District of California
- 24 conducted an investigation with respect to

- 1 CVS/pharmacy retail stores and their compliance
- with the Controlled Substances Act, it reads
- 3 "specifically investigating the recordkeeping,
- 4 reporting, procedures to guard against theft and
- 5 diversion, and certain dispensing practices
- of...CVS Pharmacy Retail Stores in the Eastern
- 7 District of California." Is that right?
- MR. DELINSKY: Object to form.
- 9 A. I was not involved in preparing this,
- 10 but that appears to summarize paragraph F.
- 11 BY MR. ELSNER:
- Q. Okay. Were you aware that the DEA was
- concerned with thefts of controlled substances
- 14 across the country?
- 15 A. Others at CVS are responsible for both
- the investigation and for operations and
- 17 compliance with what would be involved in this
- 18 sort of activity. I was not.
- 19 Q. If you turn to paragraph J, which is
- on Page 3, it reads that "CVS acknowledges that,
- 21 during the period" -- do you see where I'm at at
- the bottom of Page 3, paragraph J?
- 23 A. Yes.
- Q. "CVS acknowledges that, during the

- 1 period from April 30, 2011 through April 30,
- 2 2013, certain Eastern District of California CVS
- 3 Pharmacy Retail Stores failed to fulfill certain
- 4 recordkeeping obligations under the CSA in a
- 5 manner fully consistent with CVS's compliance
- 6 obligations."
- 7 Did I read that correctly?
- MR. DELINSKY: Object to form.
- 9 A. You did read that sentence correctly,
- 10 but the next sentence starts with
- "Notwithstanding," so I take it that's going to
- 12 say something different.
- 13 BY MR. ELSNER:
- 0. It might.
- But were you aware that CVS
- 16 acknowledged during this period that those
- 17 recordkeeping violations existed?
- MR. DELINSKY: Object to form.
- 19 A. It appears that we acknowledged it,
- 20 but we contend that a failure to fulfill those
- 21 recordkeeping obligations did not arise or did
- 22 not cause the diversion of controlled
- 23 substances.
- 24 BY MR. ELSNER:

- 0. Why did CVS admit that there were
- 2 recordkeeping violations, but contend that those
- did not arise from or cause the diversion of
- 4 controlled substances?
- 5 MR. DELINSKY: Object to the form of
- 6 the question to the extent that would require --
- 7 if you know the answer, if you possess
- 8 responsive information, to the extent it would
- 9 call you to divulge attorney/client privilege
- information or work product, and I ask that you
- 11 not answer and instruct you accordingly.
- 12 A. So I wasn't involved in the
- investigation. I don't know any particulars as
- 14 to why we would do that. I could speculate, but
- would not be advised to do so, I'm sure.
- 16 BY MR. ELSNER:
- 17 Q. So the reason you read that sentence
- was not because you had any personal information
- 19 about it?
- 20 A. No, I just think it presents a fuller
- 21 picture. And it also says the United States
- does not contend to the contrary, so the United
- 23 States --
- 24 O. Did CVS --

- 1 A. -- wasn't forcing the issue either.
- Q. Well, CVS did acknowledge that there
- 3 were recordkeeping violations related to thefts
- 4 of controlled substances in its California
- 5 stores, is that right?
- 6 MR. DELINSKY: Object to form.
- 7 A. I don't think it says anything related
- 8 to thefts. It says "failed to fulfill certain
- 9 recordkeeping obligations." I know that that
- 10 can sometimes be timing, you filed it a day
- 11 late, you gave the information but because it's
- 12 not filed within a certain time frame, I could
- see where that might be something that they
- would say, yet technically it's a recordkeeping
- violation, but it's -- you know, it wouldn't
- 16 rise to the level of causing a diversion of
- 17 controlled substances.
- 18 BY MR. ELSNER:
- 19 Q. If you look just above on Page 3 under
- the various bullets, it states that "The United
- 21 States also contends that various EDCA CVS
- 22 Pharmacy Retail Stores failed to provide
- effective controls and procedures to guard
- 24 against theft and diversion of controlled

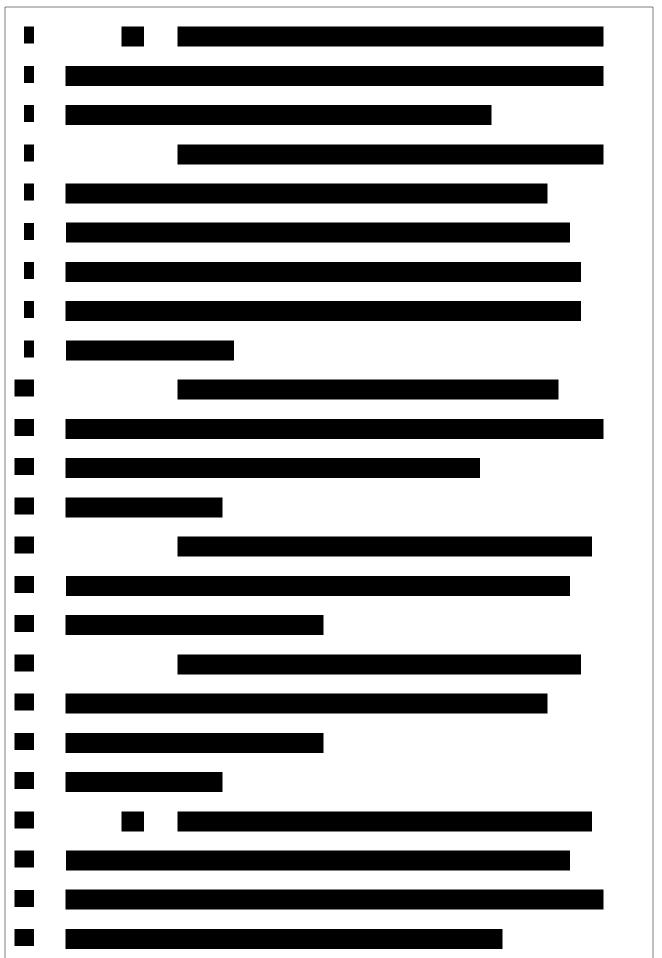
- 1 substances."
- 2 Did I read that correctly?
- A. That is the contention that's there,
- 4 yes.
- 5 Q. So it relates to thefts of controlled
- 6 substances and the reporting obligations
- 7 consistent with that, is that right?
- MR. DELINSKY: Object to form.
- 9 A. Again, I'm not involved in the
- 10 preparation of this, you know, some of the
- 11 things above that -- what you just read, failed
- 12 to record the amount or the date or to do order
- forms, that sort of thing, and then it says
- "United States also contends." So what's in
- paragraph J, I don't know that we're agreeing
- 16 that we -- that we notified -- I kind of got
- 17 lost there.
- Our recordkeeping obligations, our
- 19 failure to fulfill recordkeeping obligations did
- 20 not arise from or cause diversion of controlled
- 21 substances.
- 22 BY MR. ELSNER:
- Q. CVS agreed to pay a \$5 million fine in
- resolution of this investigation by the DEA, is

- 1 that right?
- 2 A. That's what Paragraph 1 says on
- Page 4.
- Q. And did you have a role as either
- 5 president or secretary or treasurer for the --
- 6 MR. DELINSKY: I apologize. I just
- 7 want to object to the form of the prior
- ⁸ question.
- 9 BY MR. ELSNER:
- Q. Did have you a role as either
- president, secretary, or treasurer of any of the
- 12 CVS stores in the Eastern District of California
- which were the subject of this settlement?
- MR. DELINSKY: Object to form.
- 15 A. So not with respect to the store, with
- 16 respect to the entities I would have a role.
- 17 Depends on the time frame and what entity we're
- 18 talking about, but I would have had an officer
- 19 role with the store entities. I was not
- involved in the investigation or the settlement
- or anything like that.
- 22 BY MR. ELSNER:
- Q. Were you the president of the
- 24 California entity?

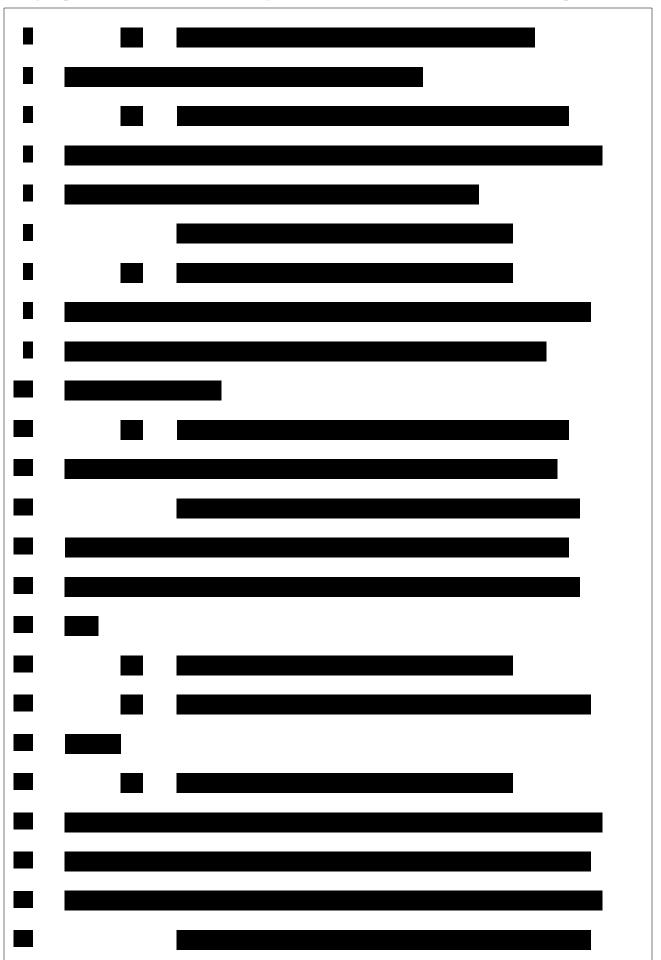
- 1 A. What time frame are we talking about?
- Q. Well, I think we can talk about two
- 3 time frames. The agreement was executed in June
- 4 of 2017.
- 5 A. So today I am president of -- we have
- 6 multiple store entities in California, and I'm
- 7 president of both of those. It looks like the
- 8 entire time frame because it talks about on
- 9 Page 2 early 2012, so that would be when I
- became president when my predecessor retired.
- 11 Q. So as of May, 2012 through 2000 --
- well, through today, you've served as the
- 13 president of the California entities over these
- 14 pharmacies, is that right?
- 15 A. That's correct.
- 16 Q. Okay. And were you made aware as
- 17 president of the CVS entities in California, of
- 18 these CVS pharmacies, that a settlement had been
- 19 reached with the DEA?
- MR. DELINSKY: Object to form.
- 21 A. Others at CVS were responsible for
- 22 operations and compliance and the people that --
- they were informed, and I as an attorney would
- 24 be aware of it, but not -- I wasn't informed of

1	something because I was president.
2	BY MR. ELSNER:
3	Q. Do you know how many thefts occurred
4	at CVS Pharmacy stores in California of
5	controlled substances prior to and during this
6	period?
7	A. Others are responsible for that sort
8	of information. I don't have that information.

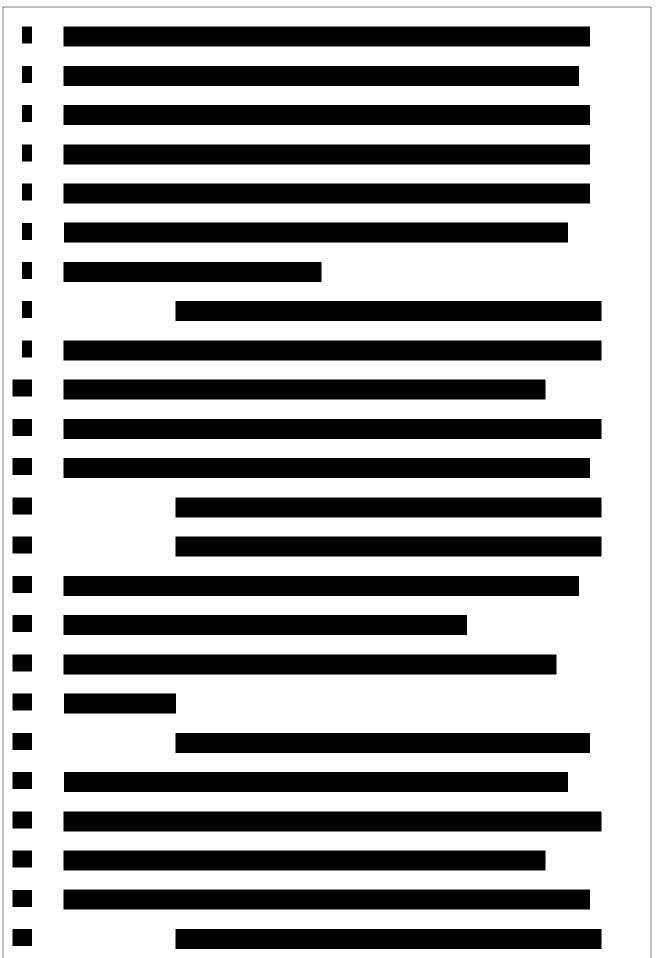
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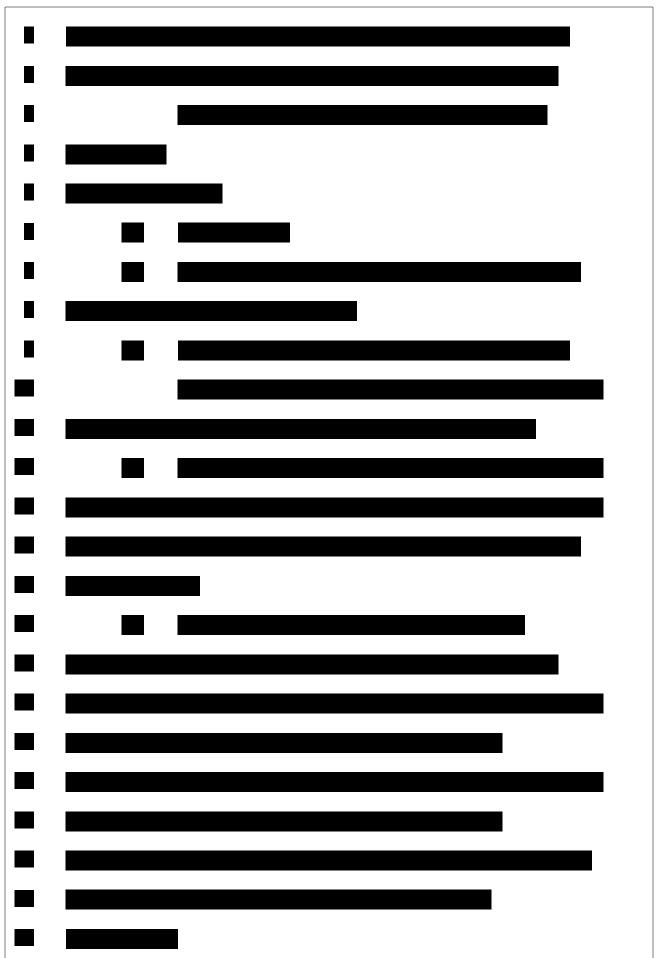
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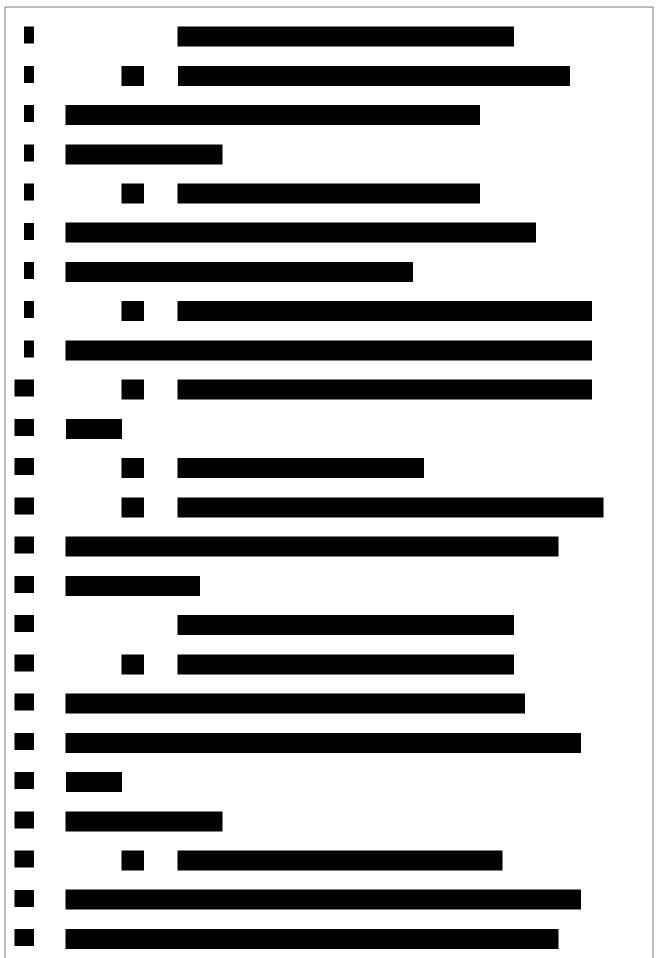
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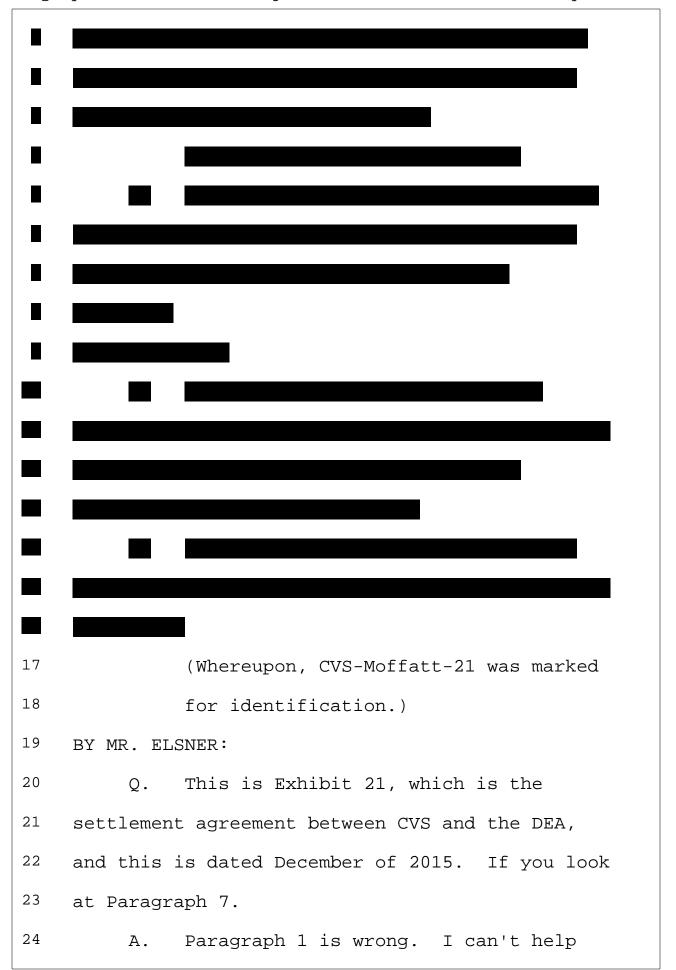


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- 1 it.
- What is it? Which paragraph?
- Q. Paragraph 7.
- 4 A. 7, okay. Okay.
- 5 Q. Sorry, what was wrong about
- 6 Paragraph 1?
- 7 A. "CVS is incorporated in Delaware."
- 8 It's incorporated in Rhode Island. So it's
- 9 referring to CVS Pharmacy, Inc.
- 10 Q. It's fair to say CVS's corporate
- 11 structure is pretty complicated, is that right?
- MR. DELINSKY: Object to form.
- A. It's -- we have a lot of entities,
- 14 yes, I'd agree with that.
- 15 BY MR. ELSNER:
- 16 Q. How many entities?
- 17 A. Right now? Roughly a thousand.
- 18 Q. And how many of those entities do you
- serve as a president or officer of?
- 20 A. I'd have to generate a report. I'm
- 21 not sure.
- Q. What's your best estimate?
- MR. DELINSKY: Objection. Asked and
- answered.

- 1 A. Hundreds of those, not all of them,
- 2 but a large number of them.
- 3 BY MR. ELSNER:
- Q. Did it -- let's go back to the
- 5 document.
- Paragraph 7 of the settlement
- 7 agreement. It reads "The United States contends
- 8 that it has certain civil claims against CVS for
- 9 engaging in the following conduct from
- 10 January 1, 2013 through October 23, 2014." And
- it then states that "On October 15, 2014, DEA
- issued a Notice of Inspection to CVS Pharmacy
- 13 5667," which is in Houston, Texas, "after that
- pharmacy had reported a theft of over 40,000
- dosage units of controlled substances by two
- 16 former employees."
- Were you aware that there was a 40,000
- dosage unit theft of controlled substances from
- the CVS store in Houston, Texas?
- MR. DELINSKY: Object to form.
- 21 A. I'm not responsible for this sort of
- investigation or activity, so I was not
- informed. Others at CVS that would be
- responsible for this would have been informed.

- 1 BY MR. ELSNER:
- Q. Did you serve as an officer of any of
- 3 the CVS -- of this CVS Pharmacy in Houston,
- 4 Texas in 2013 and '14?
- 5 A. During the time frame, I believe so,
- 6 yes.
- 7 Q. Okay. Do you know the name of that
- 8 entity?
- 9 A. The Texas stores are actually operated
- 10 by CVS Pharmacy, Inc.
- MR. DELINSKY: Would that change your
- 12 answer as to whether or not you were an officer?
- 13 A. So I am an officer of CVS Pharmacy,
- 14 Inc., vice president and secretary.
- MR. ELSNER: Asked and answered, Eric.
- MR. DELINSKY: I was trying to clear
- it up for myself.
- 18 BY MR. ELSNER:
- 19 Q. There were also a listing of
- 20 recordkeeping -- allegations of recordkeeping
- violations with respect to that theft, is that
- right, under 1, 2, and 3, beneath it?
- 23 A. Yes.
- Q. Okay. And as a result of this

- 1 investigation, CVS agreed to pay a settlement in
- the amount of \$345,000 in Paragraph 13 on
- Page 4, is that right?
- 4 MR. DELINSKY: Object to form.
- 5 A. Paragraph 13 on Page 4 refers to a sum
- 6 of \$345,000.
- 7 BY MR. ELSNER:
- Q. Were you made aware of that as the
- 9 president of CVS Texas entity?
- MR. DELINSKY: Object to form.
- 11 BY MR. ELSNER:
- 12 Q. I'm sorry, as the president of CVS
- 13 Pharmacy?
- MR. DELINSKY: Object to form.
- 15 BY MR. ELSNER:
- Q. Were you made aware of the amount of
- 17 the settlement?
- 18 A. I was vice president and secretary of
- 19 CVS Pharmacy. I -- others would be responsible
- 20 for this settlement. To the extent I learned
- about it, it would have been as an attorney.
- Q. If I could show you the next exhibit.
- There was also an investigation of CVS
- in Nassau and Suffolk County, New York on Long

- 1 Island between 2013 and 2015 concerning thefts
- of controlled substances and reporting
- ³ violations. Were you aware of that?
- 4 A. Yes, I was aware of that.
- 5 Q. This is Exhibit 22.
- 6 (Whereupon, CVS-Moffatt-22 was marked
- 7 for identification.)
- 8 BY MR. ELSNER:
- 9 Q. This is Motley Rice 242.
- 10 Can you tell me what it is you
- 11 remember about this?
- 12 A. I remember we settled it fairly
- 13 recently, although the conduct, as you said, was
- 14 from several years back, and I recall, I think,
- 15 I signed -- yeah, I signed this one.
- Q. You executed this on behalf of what
- 17 entity?
- 18 A. CVS Pharmacy, Inc.
- 19 Q. And that was the company controlling
- 20 the CVS Pharmacy, the subject of this
- investigation pharmacies, is that right?
- A. Actually, no. So it appears from
- here, it says A, settlement, "CVS Pharmacy, Inc.
- is a Rhode Island corporation with its corporate

- 1 headquarters in Woonsocket, Rhode Island. CVS
- directly or indirectly operates CVS retail
- 3 pharmacies in Nassau and Suffolk Counties."
- 4 So the entity that actually operates
- 5 stores in New York is called CVS Albany, LLC.
- 6 CVS Pharmacy, Inc. is its parent.
- 7 Q. Are you an officer of CVS Albany?
- 8 A. Yes.
- 9 Q. President?
- 10 A. I am president of CVS Albany.
- 11 O. And was that true for the time period
- concerning this investigation, which is between
- 13 February of 2013 and January of 2015?
- 14 A. Yes.
- Q. And the investigation here concerned
- 16 the failure to promptly report a theft of a
- 17 controlled substance from these stores, is that
- 18 right?
- MR. DELINSKY: Object to form.
- A. Another attorney would have been
- involved in the whole matter. So, you know, I
- was brought in at the end, as I discussed
- earlier, you know, so, you know, I was consulted
- 24 at the end when it needed to be signed. But I

- didn't have -- I wasn't directly involved in
- this, so I don't recall the particulars. Well,
- 3 I didn't know the particulars.
- 4 BY MR. ELSNER:
- 5 Q. Well, CVS agreed to pay in settlement
- of this matter \$1.5 million, is that right,
- 7 Page 2?
- 8 A. Yeah, Page 2, Paragraph 1.
- 9 0. Is that correct?
- 10 A. That is correct.
- 0. Okay. And you signed this settlement
- 12 agreement?
- 13 A. Yes.
- 0. Other than the settlement agreement
- itself, did you review any documents before you
- 16 executed this agreement?
- 17 A. Another attorney would have been
- 18 responsible for the entire matter. I don't
- 19 recall if I reviewed any documents. I had a
- 20 discussion certainly with the attorney when I
- 21 was asked to sign it.
- Q. Who was the attorney?
- A. I believe it was Mark Vernazza.
- Q. And he's employed by CVS, is that

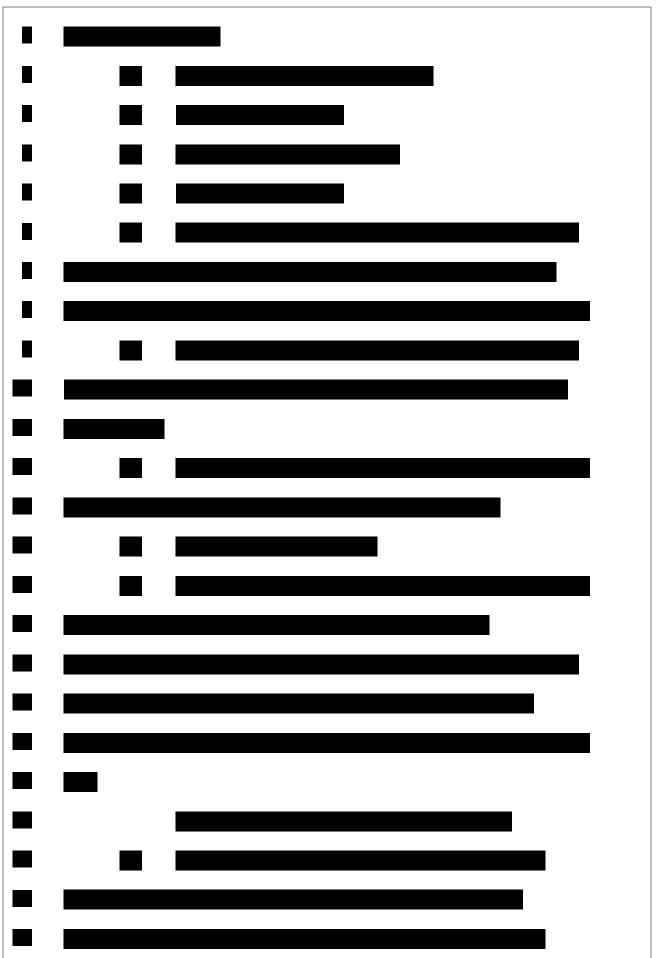
- 1 right?
- 2 A. Yes, CVS Pharmacy.
- Q. CVS Pharmacy, Inc.
- Did Mark show you any documents before
- 5 you executed the agreement?
- 6 MR. DELINSKY: Objection. Asked and
- 7 answered.
- A. I don't recall if he showed me
- ⁹ anything.
- 10 BY MR. ELSNER:
- 11 O. Did Mark share with you what the DEA
- 12 had found concerning the thefts and the
- reporting from these CVS Pharmacy stores?
- MR. DELINSKY: Object to form. And I
- instruct the witness not to answer on the
- 16 grounds that that would involve attorney/client
- 17 privileged information.
- MR. ELSNER: So what I've asked him is
- 19 I've asked him whether he, Mark Vernazza, shared
- with the witness what the DEA had found
- 21 concerning thefts in the reporting violations,
- 22 and you're asserting privilege over the DEA's
- findings and facts, is that my understanding?
- MR. DELINSKY: I'm asserting privilege

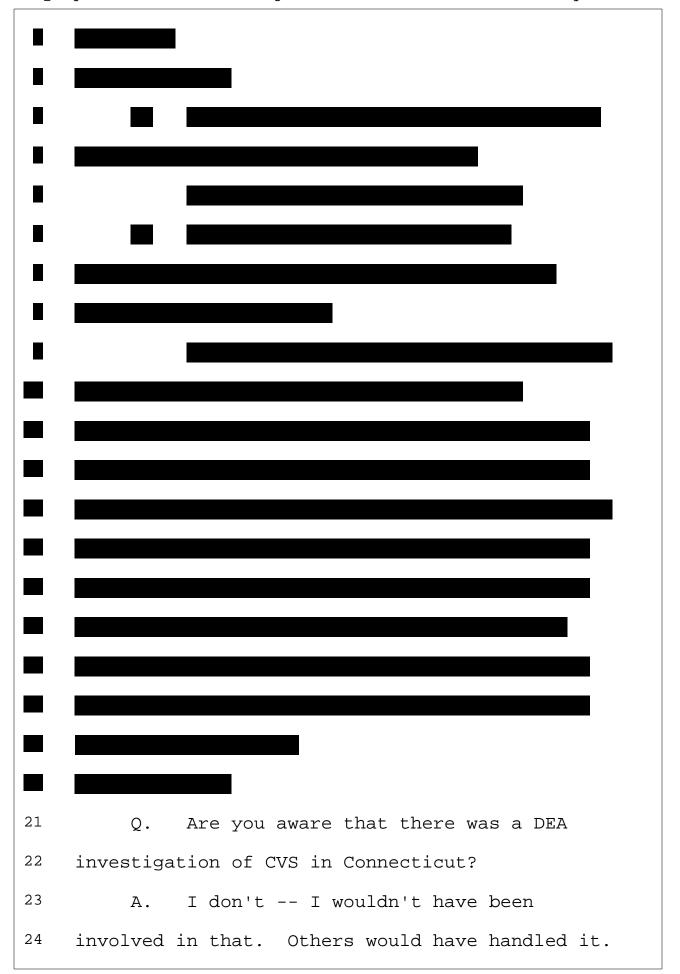
- 1 as a result of the following circumstances.
- 2 Mr. Moffatt has testified that he doesn't recall
- 3 reviewing any documents in connection with his
- 4 signing the settlement agreement, so by
- 5 definition the only way that information could
- 6 have been conveyed to Mr. Moffatt would have
- been through an attorney reflecting that
- 8 attorney's mental impressions upon hearing or
- 9 reading, depending on the facts, what the DEA
- 10 told him. So on that basis I am asserting
- 11 privilege.
- 12 I think the manner in which to proceed
- here would be for you to ask Mr. Moffatt if he
- 14 obtained any information from the attorney that
- was separate from or in addition to the
- 16 information already contained in the settlement
- 17 agreement so we at least can see if there's even
- 18 a dispute.
- 19 BY MR. ELSNER:
- 20 O. Did you obtain any information
- 21 regarding the allegations here by the DEA above
- 22 and beyond what's written in the settlement
- 23 agreement?
- A. I don't recall getting any other

- 1 information.
- Q. Did you ask for any?
- 3 A. I don't recall what we specifically
- 4 discussed.
- 5 Q. This was just in June of last year,
- 6 it's not a particularly old event, and you said
- 7 you did have a recollection of it. So did
- 8 you -- did you personally discuss any of these
- 9 matters with anyone at the DEA?
- 10 A. No. Mark or someone on Betsy's team
- would be responsible for this sort of matter.
- Q. Did the DEA provide CVS with any
- document describing its findings that you're
- 14 aware of?
- MR. DELINSKY: Object to form.
- You may answer.
- 17 A. I wouldn't have been involved, so I
- don't know what the DEA would have provided.
- 19 BY MR. ELSNER:
- Q. Did you ask Mr. Vernazza if there were
- 21 any documents provided by the DEA?
- 22 A. I did not ask him if there were
- documents provided, not that I recall.
- Q. Did you -- did Mr. Vernazza, yes or

no, tell you what the DEA findings were with 1 2 respect to these CVS stores in Long Island? 3 MR. DELINSKY: Objection. Asked and 4 answered. In connection with signing this we had 5 Α. discussions, but I don't recall specifically 6 what he told me about the contentions or, you 7 8 know, any conclusions.

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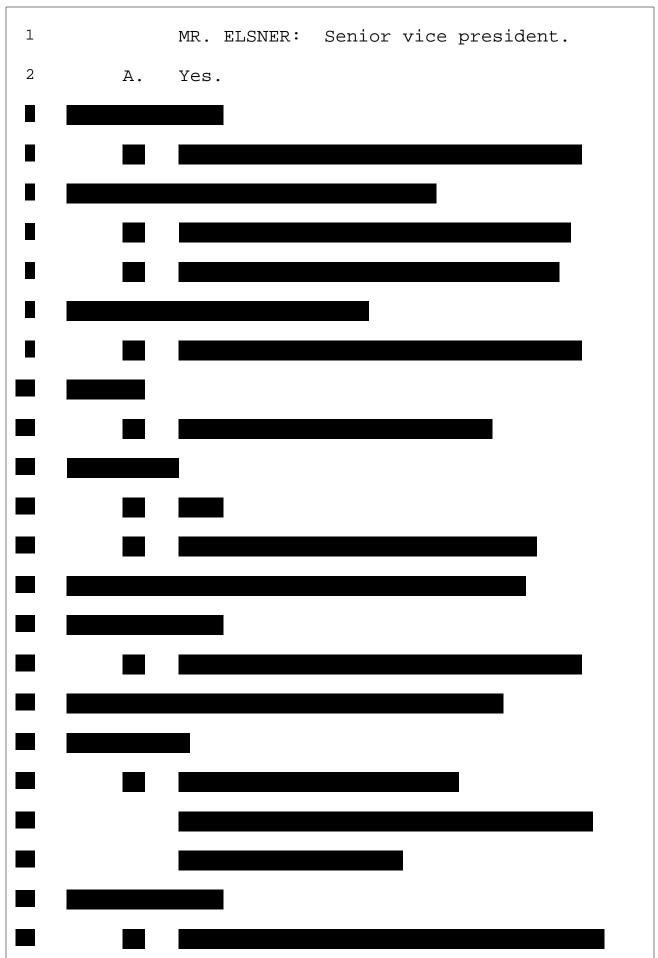




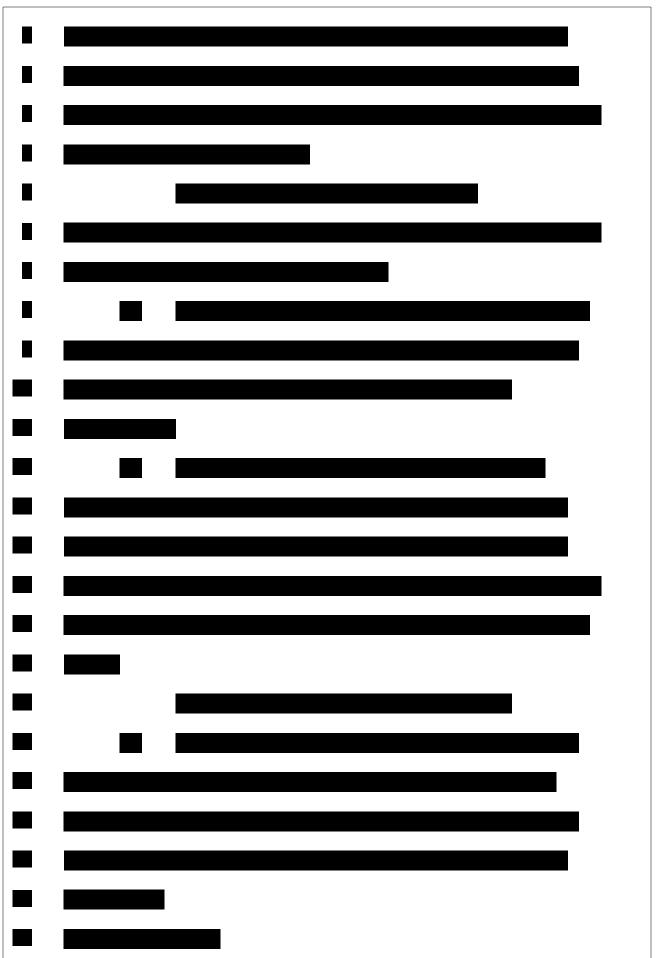
- 1 I don't specifically recall Connecticut.
- MR. DELINSKY: And, Mike, you'd
- 3 previously indicated that you hoped to finish by
- 4 1:00 or earlier. It's now 1:20. Could you give
- 5 us a sense of where you are? We've been going
- 6 an hour. I'm just trying to --
- 7 MR. ELSNER: There are three
- 8 additional settlements I want to address and ask
- 9 some wrap-up questions. So I'm happy to take a
- 10 break now if you want to do that, if you want to
- 11 take a break and go to lunch, we could do that.
- 12 But it took a little longer than I anticipated,
- 13 so...
- MR. DELINSKY: Can you give us an
- estimate? If it's a half hour, it's one thing.
- 16 If it's another hour, that's another.
- MR. ELSNER: Why don't we go off the
- 18 record and discuss it.
- THE VIDEOGRAPHER: We're going off the
- 20 record at 1:21 p.m.
- (Whereupon, a recess was taken.)
- THE VIDEOGRAPHER: We're back on the
- 23 record at 1:31 p.m.
- 24 BY MR. ELSNER:

- Q. Mr. Moffatt, before we broke I had
- 2 shared with you Exhibit 23, which is the
- 3 settlement agreement between CVS and the DEA
- 4 concerning the DEA's investigation of CVS stores
- 5 in Connecticut, is that right?
- 6 (Whereupon, CVS-Moffatt-23 was marked
- 7 for identification.)
- MR. DELINSKY: Object to form.
- 9 A. Yeah, it appears to be stores in these
- 10 two cities, Southington and New Britain.
- 11 BY MR. ELSNER:
- 0. And the DEA had determined that the
- 13 Southington store on at least 2,886 occasions
- 14 that CVS failed to keep paper Schedule III
- through Schedule V prescriptions, and invoices
- on 31 occasions with respect to the Southington
- 17 store and with respect to the New Britain store.
- 18 In Paragraph 3 the US determined that on 4,936
- 19 instances CVS failed to keep paper Schedule III
- through V prescriptions in a readily retrievable
- 21 manner from other prescriptions in the pharmacy.
- 22 Is that right?
- MR. DELINSKY: Object to form.
- A. I wasn't involved in this

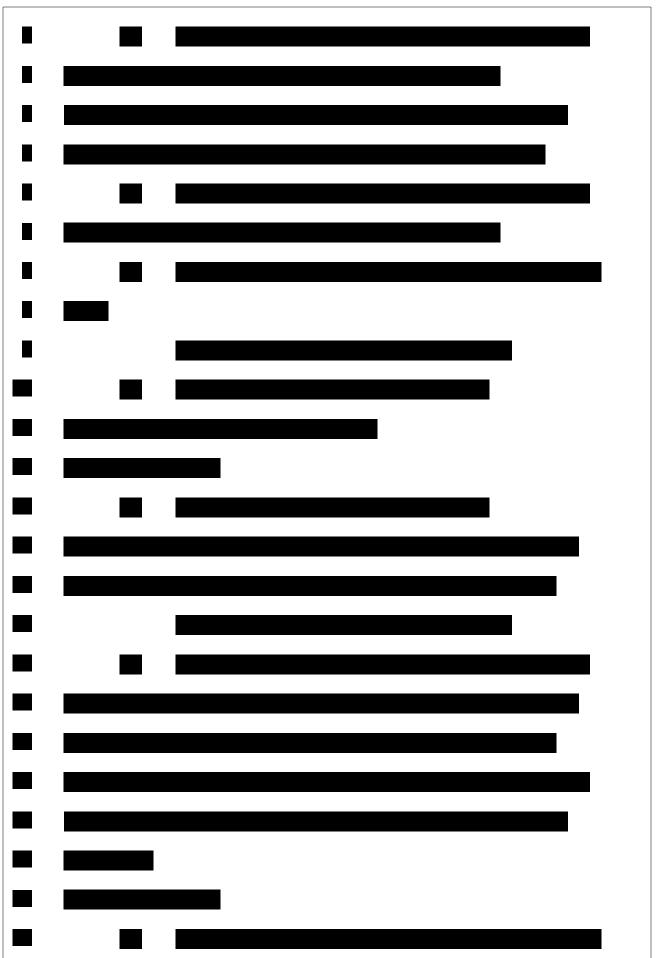
- 1 investigation at all, but that appears to be a
- 2 summary of that paragraph.
- 3 BY MR. ELSNER:
- 4 Q. And CVS entered a settlement with the
- 5 DEA and agreed to pay \$600,000 in settlement, is
- 6 that right?
- 7 A. That's in Section III, Paragraph 1.
- 8 Again, I wasn't involved in this.
- 9 Q. Were you aware that CVS agreed to
- 10 settle these -- this investigation with the DEA
- in that amount of \$600,000?
- 12 A. I have no specific recollection of
- 13 this matter. To the extent I learned anything
- 14 about it, it would have been through discussions
- between attorneys.
- Q. And the settlement agreement was
- 17 executed on behalf of Connecticut CVS Pharmacy,
- 18 LLC by Betsy Ferguson, the president and deputy
- 19 general counsel for CVS Health Corporation, is
- 20 that right?
- 21 A. That's what her signature block says,
- 22 yes.
- MR. DELINSKY: I believe it says
- 24 senior vice president.



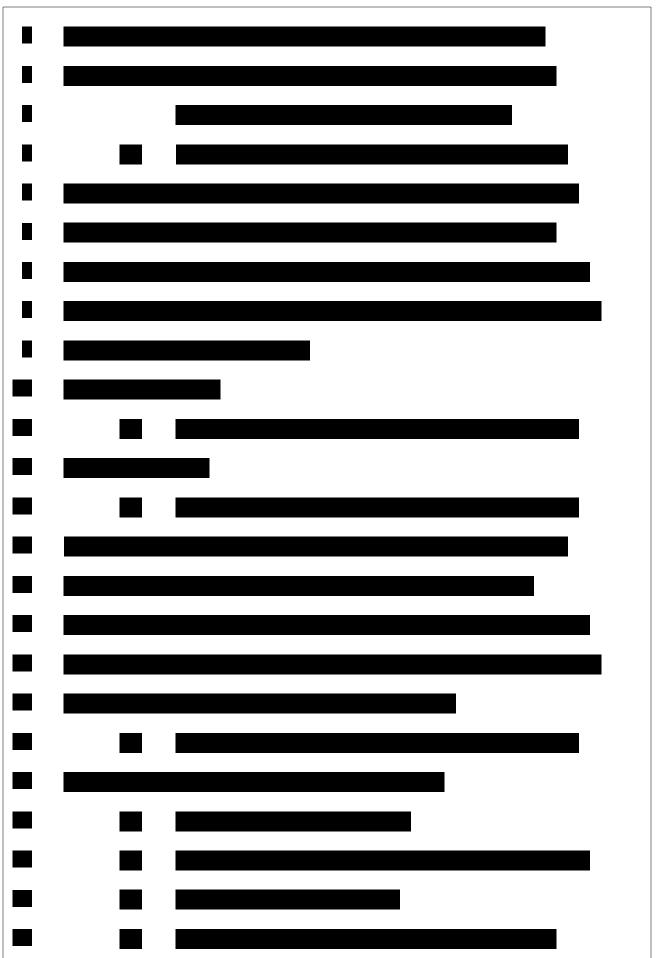
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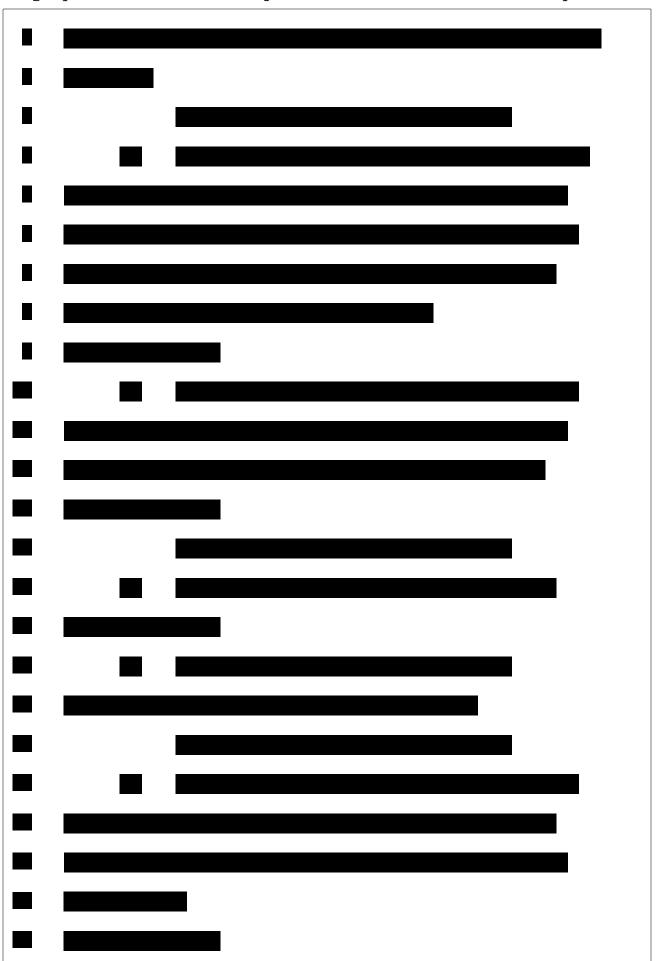
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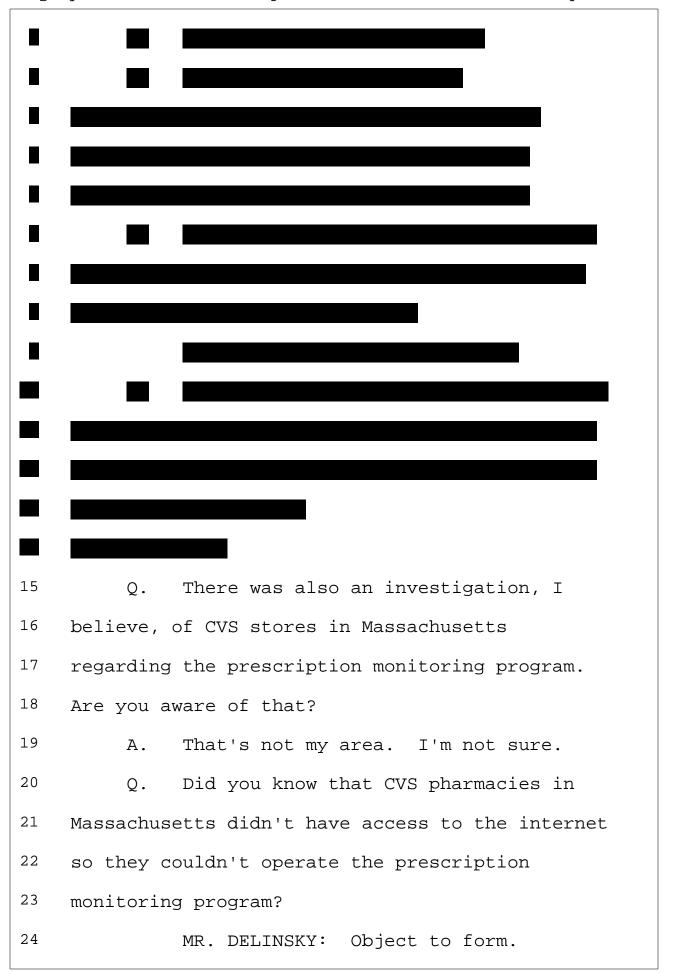


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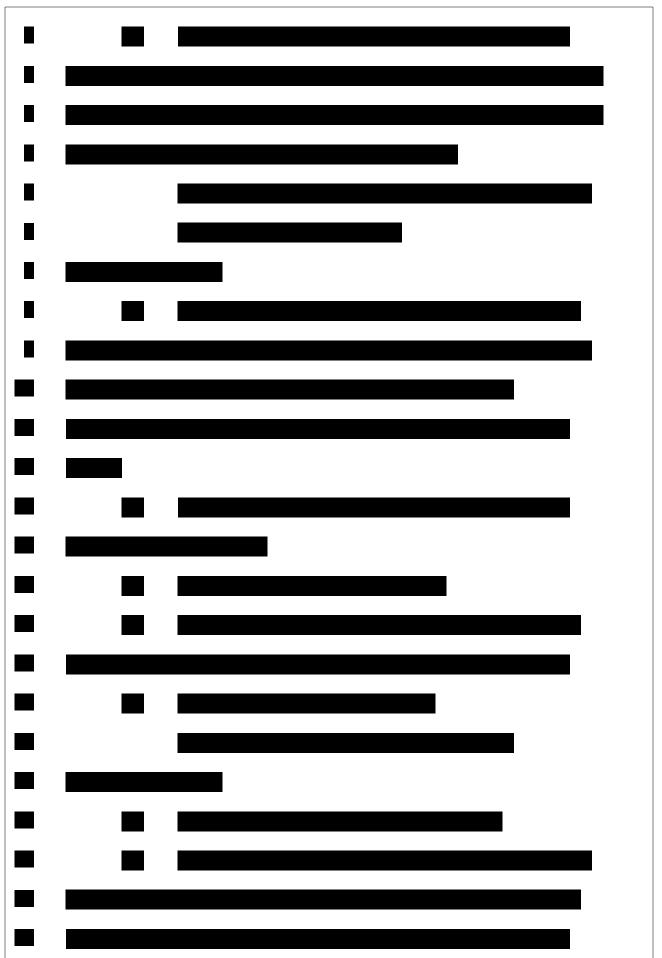




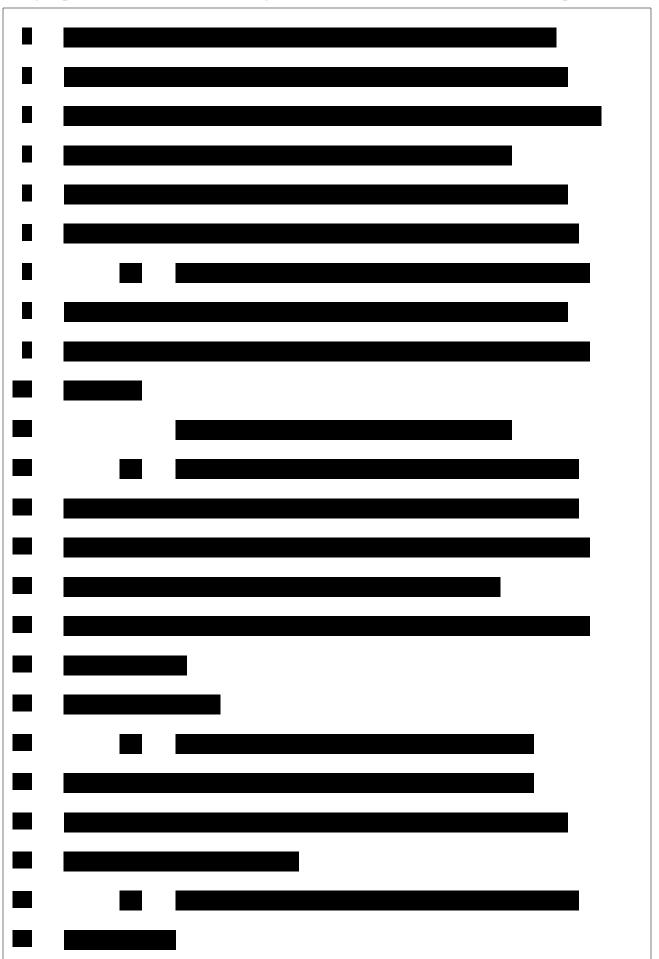
- 1 A. Others in CVS would be responsible for
- what access the stores had. I have no knowledge
- 3 about that.
- 4 BY MR. ELSNER:
- Q. Were you aware that there was a second
- 6 investigation by the DEA into CVS's operations
- 7 in Texas concerning filling prescriptions for a
- 8 physician that was not properly licensed?
- 9 Exhibit 25.
- 10 (Whereupon, CVS-Moffatt-25 was marked
- for identification.)
- 12 A. It's Paragraph 7 you're talking about?
- 13 BY MR. ELSNER:
- 14 O. Yes.
- 15 A. I see what Paragraph 7 says, yes.
- 16 Q. Okay. So the DEA was investigating
- 17 CVS pharmacies in Texas for filling
- prescriptions for a Dr. Pedro Garcia, and it was
- discovered that he didn't have a valid license
- to prescribe those substances, correct?
- MR. DELINSKY: Object to form.
- A. It says that his Texas Department of
- 23 Public Safety controlled substances registration
- was expired.

- 1 BY MR. ELSNER:
- Q. And CVS filled 153 of those
- 3 prescriptions?
- 4 A. That's what Paragraph 7 indicates.
- 5 Q. And as a result CVS entered into a
- 6 settlement with the DEA in Paragraph 13 on
- Page 4 and agreed to pay \$1,912,500 to the DEA,
- 8 is that right?
- 9 MR. DELINSKY: Object to form.
- 10 A. That's what Paragraph 13 says. Again,
- 11 I had no involvement in the settlement or the
- 12 underlying matter.
- 13 BY MR. ELSNER:
- Q. And it was executed by Betsy Ferguson
- on behalf of CVS in August of 2014, is that
- 16 right, Page 7?
- 17 A. Yes. CVS, in this case CVS Pharmacy,
- 18 Inc., yes.
- Q. And did you play a role with respect
- 20 to being an officer of the CVS entity in Texas
- 21 responsible for this CVS store?
- 22 A. So that's CVS Pharmacy, Inc., again
- vice president, secretary, assistant general
- counsel.

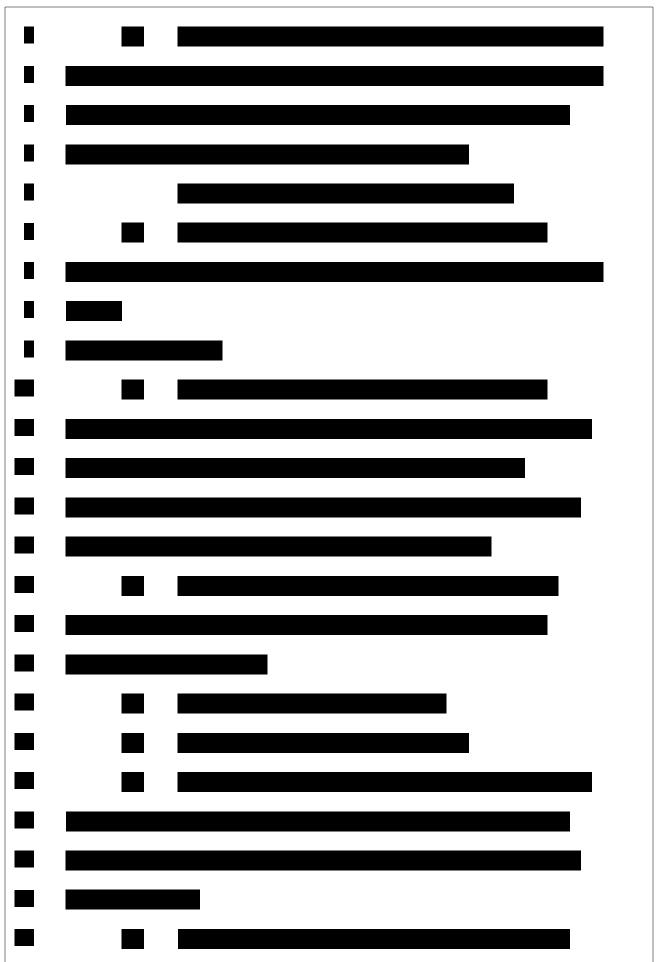
Case: 1:17-md-02804-DAP Doc#: 2173-44 Filed: 08/12/19 262 of 274 PageID #: 314771 Highly Confidential Ey Review



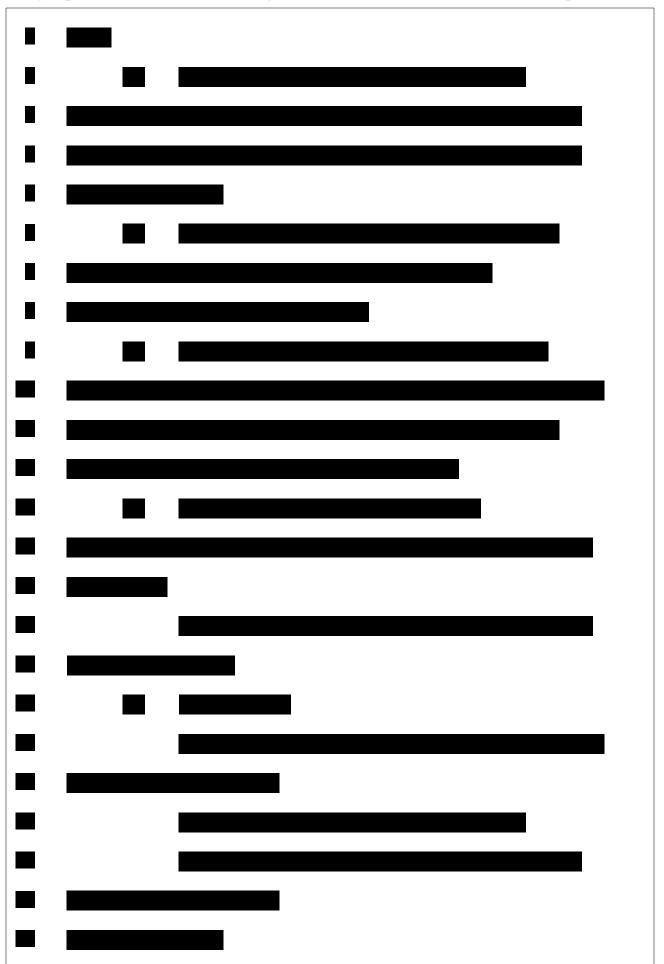
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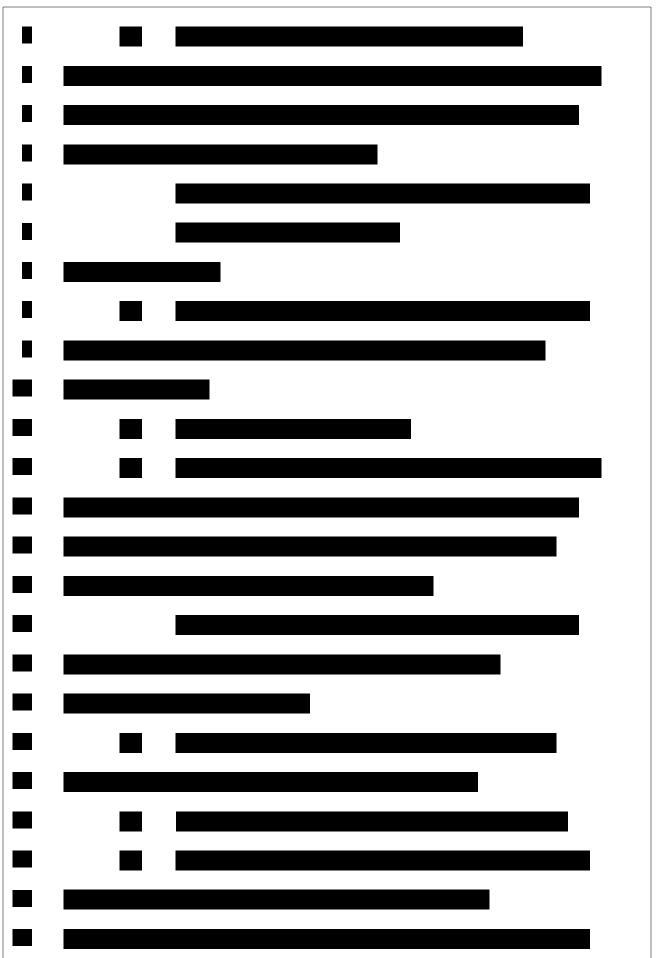
Case: 1:17-md-02804-DAP Doc#: 2173-44 Filed: 08/12/19 264 of 274 PageID #: 314773 Highly Confidential Expression Further Confidential



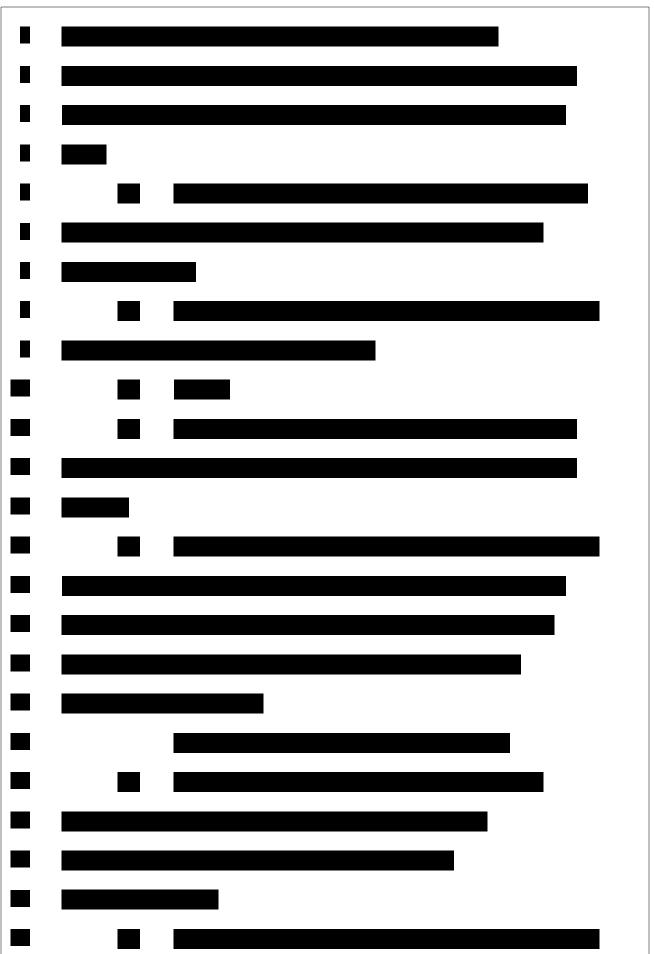
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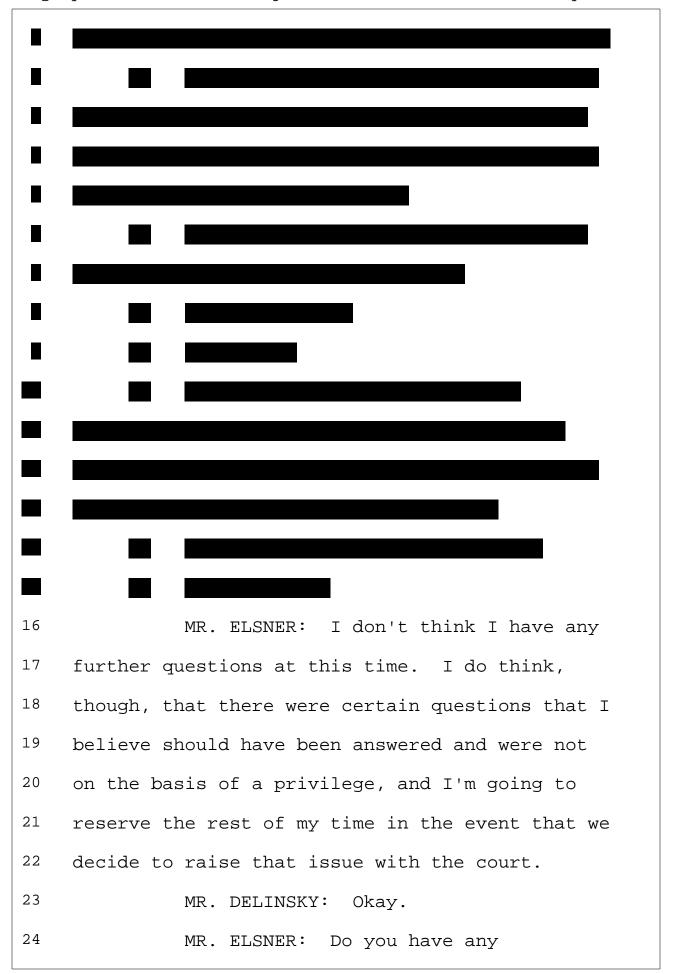


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questions?
 1
               MR. DELINSKY: Nothing further.
 2
 3
               MR. DAWSON: No questions.
               THE VIDEOGRAPHER: This concludes the
 4
    videotaped deposition of Thomas Moffatt. The
 5
    time is 1:56 p.m., and we are now off the
 6
 7
    record.
 8
               (Whereupon, the deposition was
               concluded.)
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
 1
 2
 3
               I, MAUREEN O'CONNOR POLLARD, RMR, CLR,
    and Commissioner in the State of Rhode Island
 4
 5
    and Providence Plantations, do certify that on
 6
    the 15th day of January, 2019, at 8:04 o'clock,
 7
    the person above-named was duly sworn to testify
 8
    to the truth of their knowledge, and examined,
 9
    and such examination reduced to typewriting
10
    under my direction, and is a true record of the
11
    testimony given by the witness.
12
               I further certify that I am neither
13
    attorney, related or employed by any of the
14
    parties to this action, and that I am not a
15
    relative or employee of any attorney employed by
16
    the parties hereto, or financially interested in
17
    the action.
               In witness whereof, I have hereunto
18
19
    set my hand this 17th day of January, 2019.
20
21
22
               COMMISSIONER
               My Commission Expires April 30, 2020
23
24
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1
               INSTRUCTIONS TO WITNESS
 2
 3
                    Please read your deposition over
    carefully and make any necessary corrections.
 4
 5
    You should state the reason in the appropriate
 6
    space on the errata sheet for any corrections
 7
    that are made.
 8
                    After doing so, please sign the
    errata sheet and date it. It will be attached
 9
10
    to your deposition.
11
                    It is imperative that you return
12
    the original errata sheet to the deposing
    attorney within thirty (30) days of receipt of
13
14
    the deposition transcript by you. If you fail
15
    to do so, the deposition transcript may be
16
    deemed to be accurate and may be used in court.
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1		
		ERRATA
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3	PAGE LINE	CHANGE
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5	REASON:	
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1	ACKNOWLEDGMENT OF DEPONENT							
2								
3	I,, do							
	Hereby certify that I have read the foregoing							
4	pages, and that the same is a correct							
	transcription of the answers given by me to the							
5	questions therein propounded, except for the							
	corrections or changes in form or substance, if							
6	any, noted in the attached Errata Sheet.							
7								
8								
	THOMAS S. MOFFATT DATE							
9								
10								
11								
12								
13								
14								
15	Subscribed and sworn							
	To before me this							
16	, day of, 20							
17	My commission expires:							
18								
_								
19	Notary Public							
20								
21								
22								
23								
24								

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